राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

मंगलवार, 05 अप्रैल, 2022 / 15 चैत्र, 1944

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla, 8th March, 2022

No: Shram (A) 3-8/2021 (Awards) L.C.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act,1947, the Governor Himachal Pradesh is pleased to order the

publication of awards of the following cases announced by the Presiding Officer, Labour Court Shimla on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sl. No	Case No.	Petitioner	Respondent	Date of Award / Order
1.	Ref. 21/2016	Sh. Satish Kumar	M/s Secure Meter Ltd.	01.01.2022
2.	App. 113/2017	Sh. Prem Singh	Ex. Engg., HPSEB, Shimla	01.01.2022
3.	App. 114/2017	Sh. Narender Singh	Ex. Engg., HPSEB, Shimla	01.01.2022
4.	Ref. 202/2021	Sh. Tayab	M/s Shivom Cotspin Ltd.	12.01.2022
5.	Ref. 203/2021	Sh. Gourav	M/s Shivom Cotspin Ltd.	12.01.2022
6.	Ref. 204/2021	Sh. Sagar Kumar	M/s Shivom Cotspin Ltd.	12.01.2022
7.	Ref. 205/2021	Sh. Furkam	M/s Shivom Cotspin Ltd.	12.01.2022
8.	Ref. 206/2021	Sh. Rajesh Kumar	M/s Shivom Cotspin Ltd.	12.01.2022
9.	Ref. 207/2021	Sh. Isran	M/s Shivom Cotspin Ltd.	12.01.2022
10.	Ref. 208/2021	Sh. Sabrati	M/s Shivom Cotspin Ltd.	12.01.2022
11.	Ref. 209/2021	Sh. Ikran	M/s Shivom Cotspin Ltd.	12.01.2022
12.	Ref. 210/2021	Ms. Rajni	M/s Shivom Cotspin Ltd.	12.01.2022
13.	Ref. 211/2021	Sh. Naseem Ali	M/s Shivom Cotspin Ltd.	12.01.2022
14.	App. 40/2018	Sh. Arun Thakur	Zen Technology Ltd.	13.01.2022
15.	Ref. 149/2019	Sh. Umesh Sharma	The D.F.O. Theog	13.01.2022
16.	App. 156/2018	Sh. Dinesh Kumar	Manager H.P. State Coopt Bank.	17.01.2022
17	Ref. 34/2015	Sh. Rattan Kumar	M/s Sarvotam Care Ltd.	18.01.2022
18.	Ref. 298/2020	Sh. Sonu Verma	M/s Ozone Overseas Ltd.	18.01.2022

By order,

R.D. DHIMAN, IAS,
Addl. Chief Secretary (Lab. & Emp.).

BEFORE RAJESH TOMAR PRESIDING JUDGE HP INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**.

Reference Number : 21 of 2016
Instituted on : 21.3.2016
Decided on : 1.1.2022

Satish Kumar s/o Shri Trilok Chand, r/o Village Tambroo, P.O. Draman, Tehsil Jaisinghpur, District Kangra, H.P. . .*Petitioner* .

Versus

The Managing Director M/s Secure Meters Ltd., Unit-II, Village Road Bated, Off Haripur Barotiwala, District Solan, H.P. . .*Respondent*.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Ms. Veena Sood, Advocate

For the Respondent : Shri H.R. Thakur, Advocate

AWARD

The following reference has been received from the Appropriate Government, for its final adjudication:

"**Whether the demand of Shri Satish Kumar s/o Shri Trilok Chand, Village Tambroo, P.O. Draman, Tehsil Jaisinghpur, District Kangra, H.P.** vide **demand notice dated 13.4.2015 (copy enclosed) to revoke his resignation dated 26.8.2014 which was allegedly taken under duress by the employer/management M/s Secure Meters Ltd., Unit-II, Village Road Bated, Off Haripur, Barotiwala, District Solan, H.P. and to reinstate him in service with all financial benefits before the management of M/s Secure Meters Ltd., Unit-II, Village Road Bated, Off Haripur, Barotiwala, District Solan, H.P. is legal and justified? If yes, what amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"**

2. On receipt of reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed statement of claim.

3. Key facts for the disposal of the reference are thus that the petitioner was engaged as casual worker *w.e.f.* 28.2.2006 and continued till 2742010. He was appointed as a regular worker *vide* appointment letter dated 1.4.2010 in the capacity of operator 1st class with gross emoluments of Rs. 63636/-. He has completed 240 days in a calendar year. On 26.8.2014, he was called by the HR Manager and asked him to submit his resignation but the petitioner has refused to submit the resignation. Thereafter, the management instead upon the petitioner that in case he do not submit his resignation his name will be involved some criminal case. The resignation of the petitioner was obtained under pressure forcibly which was accepted by the management on 26.8.2014. No one month notice has been given to the petitioner. The necessary provisions of the Act were not complied with. He was not paid the benefits of gratuity and other dues whereas he has served for more than five years. He has raised demand notice dated 13.5.2015 which is still pending before the appropriate government. In the footnote of the claim, the petitioner prayed for the following relief:

(i) The Hon'ble Court may kindly be direct the respondents to reinstate the services of petitioner with full back wages, in continuity of service with seniority and all other consequential service benefits throughout.

(ii). The Hon'ble Court may kindly be direct the respondents to pay Rs. 10000/- in favour of the petitioner as litigation cost.

4. The lis was resisted and contested by filing written reply on *inter-alia* raising preliminary objections of voluntarily resignation, maintainability, non-joinder of necessary parties and no relationship of employer and employee.

5. On merits, it is denied that the petitioner was engaged as casual worker *w.e.f.* 28.1.2006 and continued to work in that capacity till 27.4.2010. In fact, the petitioner was employed *w.e.f.* 1.4.2010 *vide* appointment letter and confirmed *w.e.f.* 1.10.2010. It is denied that the Manager HR of the company had asked him to submit the resignation. The management neither forcibly taken the resignation nor terminated his services. The petitioner himself resigned from

service and terminated the contract of employment. It is therefore prayed that the claim petition filed by the petitioner deserve to be dismissed.

6. Rejoinder was not filed. On elucidating the pleading of parties, the following issues were struck down by my Learned Predecessor for its final determination *vide* Court order dated 7.6.2017.

1. Whether the resignation dated 26.8.2014 was taken from the petitioner by the respondents under duress, as alleged? . .*OPP*.

2. If issue no.1 is proved in affirmative to what relief of service benefits the petitioner is entitled? . .*OPP*.

3. Whether the claim petition is bad for non-joinder and misjoinder of necessary parties, as alleged? . .*OPR*.

4. Relief

7. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

8. I have heard the Learned Counsel for the parties and also gone through the record of the case carefully.

9. For the reasons to be recorded hereinafter, while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : No

Issue No.2 : Not entitled any relief

Issue No.3 : No

Relief : Reference answered In negative as per operative part of the Award

REASONS FOR FINDINGS

ISSUES NO.1 & 2

10. Being interlinked and inter-connected both these issues are taken up together for discussion and decision.

11. In order to substantiate his case, the petitioner himself stepped into the witness box as PW-1 and tendered in evidence his sworn in affidavit (PW-1/A) wherein he has reiterated almost all the averments as stated in the claim petition. He also tendered in evidence copy of demand otice (PW-1/B), copy of letter dated 24.6.2015 (PW-1/C), copy of employment (PW-1/D, copy of salary statement for the month of October 2012 (PW-1/E), copy of salary statement dated 1.4.2011 (PW-1/F) and confirmation letter (PW-1/G). In cross-examination, he admitted that he was appointed *vide* (R-1). He further admitted that he was confirmed *vide* letter dated 1.10.2010 (R-2). He denied that one Surat Singh had caught him with Chyra Bukka on 26th August, 2014. He admitted that the resignation letter dated 26th August, 2014 is in his handwriting and also bears his signatures and that he had received the resignation acceptance (R-3) by hand. He also admitted to have received full & final settlement. He admitted that he had withdrawn his PF. He further admitted that he had not made any complaint regarding the forcible resignation. He admitted that he had filed the case after one year of the occurrence.

12. (PW-2) Ajay Banyal, appeared into the dock to depose that he knows the petitioner and he was working in Secure Meter before he joined the company on 26.11.2006. He further deposed that the petitioner was working as Line Supervisor and his act and conduct was very good. He also deposed that the petitioner was thrown out from service as he was blamed to be carrying drugs which was false. In cross-examination, he admitted that he is undue suspension these days and an enquiry is pending against him. He denied that because of the suspension he is deposing falsely with intention to help the petitioner. He admitted that the petitioner was not checked in his presence by the security staff.

13. On the other hand, the respondent examined two RWs. (RW-1) Shri Sachin Sehgal, Head Administration, Hero Cycles Ltd., Punjab has stated that he worked with the respondent company for about seven years *w.e.f.* Feb., 2010 to March 2017. On 26.8.2014, the petitioner was subjected to routine risking whereby he was allegedly found in possession of one pouch containing the poppy straw and thereafter the matter was referred to HR. The petitioner submitted his resignation and apology to the HR in his presence and after accepting the resignation, the petitioner was paid his full & final dues. In cross-examination, he admitted that the frisking of the petitioner was not conducted before him. He admitted that neither police complaint was filed against the petitioner nor conducted any domestic enquiry in this case.

14. Shri Jai Chand (RW-2) deposed in the witness box that the petitioner was found in possession of poppy straw on 26.8.2014 at the time of routine frisking and thereafter the matter was reported to Manager Administration, who brought the matter to his notice. He proved on record the apology (RW-2/A) and resignation (RW-2/B) letters tendered by the petitioner and acceptance letter (R-3) on record. In cross-examination, he admitted that no domestic enquiry was conducted in this case. He denied that the apology letter and resignation was obtained from the petitioner by putting unnecessary pressure and force to him. He also admitted that no police complaint was lodged in his case. He denied that the petitioner was not found in possession any contraband. He admitted that the petitioner had worked with the company continuously since 1.4.2010 till 26.8.2014.

15. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

16. Thus, from the careful examination of entire record, there is absolutely no denial to the fact that the petitioner had been engaged by the respondent on issuing appointment letter dated 1.4.2010 in the capacity of operator. Though, the petitioner has claimed to be working as casual labourer with the respondent management since 26.2.2006, however, there is no documentary proof has been placed on record except the bald statement of the petitioner. The oral assertion put forth in the absence of any documentary proof cannot be treated as a truth. It is proved on record that the petitioner had been engaged *vide* appointment contract *w.e.f.* 1.4.2010. There is no denial to the fact that the services of the petitioner were regularized and confirmed by issuing the confirmation letter dated 1.10.2010. There is again no denial about the fact that resignation of the petitioner was accepted on 26.8.2014. The case set up from the side of the petitioner is that the management had obtained his resignation forcibly due to some union activities in the company. He was forced to tender his resignation otherwise he will be involved in some criminal case. Therefore, it is a case of resignation obtained under pressure and forcibly.

17. Now, the question which arises before this Court as to whether the services of the petitioner were terminated illegally or not.

18. On the other side the case set up from the side of the respondent management is that at the time of routine checkup on 26.8.2014 at about 7.00 A.M. the petitioner was found in possession

of contraband. The petitioner has admitted his guilt in writing and tendered an apology. The petitioner has also tendered his resignation voluntarily out of his own volition.

19. Now, another question arises before this Court that whether the resignation tendered by the petitioner has been obtained forcibly or under pressure or the same has been tendered voluntarily.

20. To prove the said factum, both the parties led oral as well as documentary evidence on record. The petitioner besides examining himself also examined co-worker. On the other hand, the respondent management examined Sachin Sehgal (RW-1) and Jai Chand Thakur (RW-2). Keeping in view the documentary proof as well as after considering the final arguments while taking note of the fact of apology letter dated 26.8.2014 and resignation letter (RW-2/B), this Court comes to the conclusion that the services of the petitioner have not been terminated illegally rather he had tendered his resignation voluntarily on his personal grounds. Simultaneously, *vide* apology letter (RW-2/A), the petitioner in his own handwriting submitted that on 26.8.2014 at about 7.00 A.M. he was found in possession contraband which is against the principles of the company. He had admitted his guilt and tendered an unconditional apology. Admittedly, the resignation dated 26.8.2014 tendered by the petitioner has been accepted. It is also admitted that full & final settlement amount has been paid to the petitioner except gratuity.

21. To arrive at an inescapable conclusion that the petitioner submitted his resignation voluntarily, it could be summed up firstly that on 26.8.2014, at about 7.00 A.M. the petitioner was found in possession of contraband. Secondly, the petitioner has duly admitted his guilt in writing and tendered unconditional apology. Thirdly, the petitioner had requested the management not to report the matter to the Police and submitted his resignation. Fourthly, the resignation submitted by the petitioner is volunteer which was accepted by the respondent management which fact is clear from the cross-examination of petitioner (PW-1) whereby he has admitted that he had not filed any complaint regarding the forcible resignation and he raised the demand notice after expiry of ten months. Fifthly, it is proved that the petitioner was fully aware of the consequences of misconduct, hence, he requested the management not to report the matter to the Police. Sixthly, at his apology, the management did not report the matter to the police and accepted his resignation. The petitioner himself admitted that he had withdrawn the full & final settlement amount paid by the respondent.

22. Smt. Veena Sood, Advocate for the petitioner vehemently submitted that the resignation of the petitioner was obtained in duress. On the opposite side, the resignation can be withdrawn at any time before it take effected. She also argued that there is a violation of principles of natural justice and a delay of ten months is not a big deal. Since, the resignation of the petitioner was to take effect from 26.8.2014, in my opinion the arguments raised by the Ld. Counsel for the petitioner holds no grounds. Since, the un-conditional apology and resignation *vide* support letter dated 26.8.2014 was duly accepted on the same day and it has become final. Here, I am supported by Hon'ble Supreme Court judgment in ***Raj Kumar Vs. UOI, AIR 1969 SC 180*** decided on 18.04.68 wherein it was held that :

> **"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."**

23. I am also supported by Hon'ble **High Court of Delhi in Deepak Kumar Bali** Vs. **HMT, (2009) III LLJ**, whereby it is further held that :

> **"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was**

transferred to Pinjore but refused to join the new station and instead made representations against the same. S Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

24. In a case titled **Gujarat State Road Transport Corporation** Vs. **Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"**the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter**."

25. Hence, no Industrial Dispute can be raised in such case similar is law laid down in **Rukshana Eisa** Vs. **Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"**after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."**

26. Again it is held that once resignation tendered by the workman voluntarily, no lien arises in his favour by the Hon'ble **Gujarat High Court in H.M.P Engineers Ltd. Fatehnagar** Vs. **R. Kashi Naidu, 2010 LLR 252** wherein it is held that :

"**once the workman voluntarily resigned on accepting voluntary Retirement Scheme, and it being duly accepted, he cannot later on withdraw his option**."

27. Verily, it is alleged by the petitioner that he was forced to give his resignation. I feel this allegation of the petitioner is afterthought as the resignation was tendered on 26.8.2014, while it was not mentioned as to when the allegation of the force and threat to put the life in danger was made. Hence, it is presume that this allegation is afterthought. Even otherwise, it is an admitted fact that the petitioner has not made any police report of his forcible resignation or threatening. There is no such complaint either oral or in writing was ever made by the petitioner to any authority or quarter concern that the resignation was sought from the petitioner under duress.

28. For the foregoing reasons. This Court reaches to an inescapable conclusion that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any relief. Accordingly, both these issues are decided in favour of the respondent and against the petitioner.

ISSUE NO. 3.

29. It has not been shown by the respondent as to how the claim petition is bad for non-joinder and misjoinder of necessary parties. Therefore, in the absence of any cogent evidence it

cannot be said that the claim petition is bad for non-joinder and misjoinder of necessary parties. Hence, this issue is answered in the negative and decided against the respondent.

RELIEF.

30. As a sequel to my foregoing discussion on issues no. 1 to 3, *supra*, the reference is answered in negative in favour of the respondent and against the petitioner. Copies of award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Announced in the open Court today this 1st Day of Jan., 2022

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-*Labour Court Shimla.,*

BEFORE RAJESH TOMAR PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Application Number	:	113 of 2017
Instituted on	:	3.10.2017
Decided on	:	1.1.2022

Prem Singh S/o Shri Molak Ram R/o Village Naklashi, P.O. Thaila, Tehsil & District Shimla, HP. . .*Petitioner.*

Versus

1. Sr. Executive Engineer, Shimla Electrical Division No.1 HPSEBL, Kasumpati, Shimla, HP.

2. Assistant Executive Engineer, Electrical Sub-Division, HPSEBL, Mashobra, Shimla, HP.

3. Junior Engineer, Electric Sub-Division, HPSEBL, Mashobra, Shimla, H.P.

. .*Respondents.*

Application under section 2(A) (2) of the Industrial Disputes (Amended) Act, 2010

For the Petitioner : Shri Raj Kumar, Advocate
For the Respondent : Shri Surender Sharma, Advocate

AWARD

This is a direct application filed on behalf of the petitioner in terms of section 2(A) (2) of the Industrial Disputes (Amended) Act, 2010 (here-in-after to be referred as the Act) seeking reinstatement along-with all consequential benefits including back-wages, seniority, continuity and regularization.

2. Briefly, the case of the petitioner is that he had been engaged as Class-IV employee on daily wages basis *w.e.f.* 1.1.1997 and worked till December, 2001 and thereafter his services were terminated without any reason and serving any prior notice, without complying with the provisions of the Act and also without payment of any compensation. The respondent department had engaged many persons after illegal termination of the petitioner. Many juniors to the petitioner were also retained. The petitioner had completed 240 days in a calendar year. The persons namely Ram Molak Ram, Mohinder Singh, Bheem Singh, Prem Chand and many others who were junior to the petitioner were also re-instated and has been regularized by the respondents whereas no employment was offered to the petitioner. The illegal termination of the petitioner is in violation of sections 25-F, 25-G and 25-H of the Act. In the footnote, the petitioner prayed for the following relief:

> **"It is, therefore, respectfully prayed that directions may kindly be issued to the respondents to re-instate the petitioner in service along-with all consequential benefits/relief(s) of back-wages, seniority, continuity and regularization of services besides the cost of the petition."**

3. The lis was resisted and contested on filing written reply wherein preliminary objections qua delay and latches, estoppel and there is no violation of the provisions of the Act has been taken.

4. On merits, it is submitted that the petitioner was engaged as beldar on daily wages basis for specific period. The copy of mandays chart reflects that the petitioner had worked for a brief period since 26.12.1996 instead of 1.1.1997 to 25.8.1997 instead of December, 2001 and worked for 25 days only. There is no violation of sections 25-F, 25-G and 25-H of the Act. The petitioner had left the job wilfully absenting and not reporting to his delegated duties as assigned to him. No junior person has been engaged or remained in service. The respondent prayed for the dismissal of the claim petition.

5. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those in the claim petition.

6. On elucidating the pleading of parties, the following issues were struck down by my Learned Predecessor for its final determination *vide* Court order dated 1.10.2019.

1. Whether the termination of the petitioner *w.e.f.* the year 1998 is voilative of provisions of sections 25-F, 25-G and 25-H of the Industrial Disputes Act as alleged? If so, to what relief the petitioner is entitled to? . .*OPP*.

2. Whether the claim petition is hit by the vice of delay and latches, the claim having been raised after a gap of 16 years, as alleged, if so its effects thereto? . .*OPR*.

3. Whether the claim petition is not maintainable, as alleged? If so its effect thereto? . . *OPR.*

4. Relief

7. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

8. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

9. For the reasons to be recorded hereinafter, while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No .1 : Partly yes

Issue No. 2 : No

Issue No. 3 : No

Relief : Reference partly answered in affirmative as per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 & 2

10. Being interlinked and inter-connected both these issues are taken up together for discussion and decision.

11. The petitioner namely Narender Singh stepped into the witness box (PW-1) and tendered in evidence his sworn-in affidavit (PW-1/A) wherein he has reiterated almost all the averments as stated in the petition. In cross-examination, he denied that he had left the job in the year 1997.

12. (PW-2) Shri Ashwani Verma, Assistant Executive Engineer has deposed that the petitioner had worked with the department *w.e.f.* 26.12.1997 till 15.1.1997 and 1.8.1997 to 25.8.1997. The first demand notice issued by the petitioner relates to 1.6.2016. He proved on record seniority list of T-mates (PW-2/A). In cross-examination, he admitted that the workers namely Molak Ram, Mohinder Singh, Devi Ram, Naresh Kumar, Rajesh Kumar have been re-engaged pursuant to the order of the Court.

13. Shri Vidya Sagar, Junior Office Assistant from the office of Labour Office Zone Shimla appeared into the witness box as (PW-3) and deposed that the demand notice was received by the Labour Office on 1.6.2016. In cross-examination he admitted that as per the record on 17.9.2017, the Labour Commissioner had passed an order (R/2) whereby the dispute was held to be non-existence being stale and belated.

14. On the other hand, the respondent examined Shri Sanjeet Kumar, Senior Assistant as (RW-1), who deposed that the petitioner worked from 26.12.1997 to 15.1.1997 and 1.8.1997 to 25.8.1997 as per mandays chart (R-1). The petitioner had left the job on his own. The petitioner did

not complete 240 days in a calendar year and no junior person was retained. The petitioner filed the claim petition after 20 years in the year 2017. In cross-examination, he denied that the petitioner had worked from 1996 to December 2001 continuously and completed 240 days in a calendar year. He denied that the petitioner was orally terminated. It denied that the petitioner had been terminated orally without paying any compensation.

15. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

16. Shri Raj Kumar, Ld. Counsel for the petitioner strenuously argued that the junior to the petitioner were re-engaged and re-employed by the respondent. He has also brought to my notice the award passed by this Court in Application No. 92 of 2014 decided on 17.6.2016. It is also argued that the Hon'ble High Court of H.P. in CWP No. 2201/2009 along-with CWPs No. 2202, 2206, 2227, 2587 and 4427 of 2009 decided on 10.6.2010 held that when the workman had completed 240 days preceding his retrenchment notice is required to be issued under section 25-F of the Act. The plea of abandonment or relinquishment of service is always a question of intention and normally such an intention cannot be attributed to an employee without adequate evidence in that behalf. It has to be determined in the light of the surrounding circumstances of each case. Shri Raj Kumar, Ld. Counsel for the petitioner also invited my intention to the case law as reported in (2017) 1 SCC 263 titled as Basant Singh *Vs.* State of Himachal Pradesh and Ors. wherein it has been held that the law of parity is applicable to the cases of similar situated persons referred for adjudication, to the references received from the appropriate government under section 10 without any objection with regard to delay. He argued that the case of the petitioner shall also be considered for reference ignoring objection on the ground of delay similar to Balbir Singh (Application No. 92 of 2014), Dinesh Kumar (Reference No. 1/2016) and Devi Ram (Application No. 92 of 2014).

17. Per contra, Shri Surender Sharma, Ld. Counsel for the respondents strenuously argued that the petitioner has miserably failed to prove that he had rendered continues service for 240 days in a calendar year. Since, the petitioner had workers for 25 days, hence, he is not entitled to any relief as claimed by him.

18. This is the entire case record. It is duly established on record that the petitioner was engaged as daily wager beldar. As per the petitioner, he was engaged as beldar on muster roll basis *w.e.f.* 1.1.1997 till December 2001 and had completed 240 days in a calendar year. It is alleged that the respondent had illegally terminated the services of the petitioner *w.e.f.* the year 2001. It is also alleged that the services of the petitioner had been retrenched without giving any notice for retrenchment and compensation in lieu thereof which is gross violation of the mandatory provisions of section 25-F of the Act. At the time of his termination, junior persons to him have been retained in service as such the respondent has violated the provisions of "last come first go". The names of the juniors who were retained by the respondent are Molak Ram, Mohinder Singh, Devi Ram, Naresh Kumar, Rajesh Kumar and many others. It is further alleged that after the termination of the services of the petitioner the respondent had appointed fresh hands. He was not given an opportunity of re-employment. From the date of his termination, he is unemployed. He has approached the respondent for his reengagement time and again but of no avail. He is entitled for regularization after completion of 8 years of service with all consequential benefits. The act and conduct of the respondent are illegal and unjustified and they have violated the provisions of sections 25-F, 25-G and 25-H of the Act. As per the deposition of (RW-1), it is clear that the petitioner had worked *w.e.f.* 26.12.1997 to 15.1.1997 and 1.8.1997 to 25.8.1997. However, during cross-examination the petitioner has categorically stated that he had worked from 1.1.1997 till March 2001. It is well settled that admission is the best piece of evidence and the case admitted needs not be proved. So, it can be safely held that the case of the respondent stands established on

record that the petitioner had been engaged on 26.12.1997. A plea was taken by the respondent that the petitioner had left the job at his own free will and volition. It is well known that abandonment has to be proved like any other fact by the respondents/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. There is nothing on record to show that a notice was served upon the petitioner by the respondents calling upon him to resume the duties after he allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Therefore, the plea of abandonment raised by the respondents neither established on record nor is tenable.

19. It was claimed by the petitioner that he had worked continuously with the respondent till December 2001 without any break and had completed 240 days .

20. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In ***R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106,*** it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

21. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the February, 2004. No such record is there on the file to establish that the petitioner had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

22. Now, adverting to the other aspect of the case, Shri Raj Kumar, Ld. Counsel for the petitioner argued that after the termination of the services of the petitioner, the respondents have retained persons junior to him and also engaged fresh hands. PW-2 Shri Ishwani Verma has categorically admitted that the workers namely Molak Ram, Mahinder Singh, Devi Ram, Naresh Kumar and Rajesh Kumar have been re-engaged pursuant to the Court orders. As per the seniority list (PW-2/A), the services of Shri Molak Ram have been re-engaged in the year 2011, Devi Ram and Naresh Kumar have been re-engaged in the year 2002. This indicates that person junior to the petitioner is still serving the respondents/department. The respondents have failed to adhere to the principle of 'last come first go'. Retaining the junior at the cost of senior is nothing but unfair labour practice.

23. It was also claimed by the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondents. Except for his self-serving and oral testimony, there is no other ocular or documentary, cogent, convincing and reliable evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are not attracted in this case. That apart and more importantly, the petitioner was not entitled to invoke the provisions of Section 25-H of the Act and seek re-employment by citing the case of other employees, who were already in employment and whose services were regularized by the respondents on the basis of their service records in terms of the rules. To my mind, the regularization of the employees already in service does not give any right to the retrenched employee so as to enable him to invoke Section

25-H of the Act for claiming re-employment in the services. The reason is that by such act the employer does not offer any fresh employment to any person to fill any vacancy in their set up, but they simply regularize the services of any employee already in service. Such an act does not amount to filling any vacancy. The expression 'employment' signifies a fresh employment to fill the vacancies, whereas the expression 'regularization of the service' signifies that the employee, who is already in service, his services are regularized as per service regulations.

24. The Ld. Counsel for the respondent contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82***, wherein it was *inter-alia* held:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

25. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as ***Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)*** will also be advantageous on this aspect of the matter.

26. In case titled as ***Assistant Engineer Rajasthan Development Corporation and another* vs. *Geetam Singh*** reported in ***2013 (136) FLR 893 (SC)***, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as ***Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651***, by relying upon the cases of ***Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177*** and ***District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)*** , it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as ***State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791,*** the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner had remained engaged with the respondents from November, 1999 utpil February 9, 2004, though he is claimed to have worked intermittently by the respondents during this period, and who had worked as a non-skilled worker and had raised industrial dispute by issuance of demand notice after more than

eleven years *i.e.* demand notice was given in the year 2014. It is also pertinent to mention here that the petitioner on the date of his examination before this Court was aged about 45 years and had sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

27. In view of the discussion and findings arrived at by me above, a lump-sum compensation of Rs. 75,000/- (Rupees Seventy Five Thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues no. 1 and 2 are answered partly in the affirmative and accordingly decided in favour of the petitioner.

ISSUE NO. 3

28. It has not been shown by the respondents as to how the present petition/statement of claim is not maintainable. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and decided against the respondents.

RELIEF

29. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondents are hereby directed to pay a compensation of Rs. 75,000/- (Rupees Seventy Five Thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondents to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of Jan., 2021

RAJESH TOMA)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE RAJESH TOMAR PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**.

Application Number	:	114 of 2017
Instituted on	:	3.10.2017
Decided on	:	1.1.2022

Narender Singh s/o Shri Tulsi Ram, r/o Village Naklashi, P.O. Thaila, Tehsil & District Shimla, HP. . .*Petitioner.*

Versus

1. Sr. Executive Engineer, Shimla Electrical Division No.1 HPSEBL, Kasumpati, Shimla, H.P.

2. Assistant Executive Engineer, Electrical Sub Division, HPSEBL Mashobra, Shimla, H.P.

3. Junior Engineer, Electric Sub Division, HPSEBL, Mashobra, Shimla, H.P. . .*Respondents.*

Application under section 2(A) (2) of the Industrial Disputes (Amended) Act, 2010

For the Petitioner : Shri Raj Kumar, Advocate.
For the Responden : Shri Surender Sharma, Advocate.

AWARD

This is a direct application filed on behalf of the petitioner in terms of section 2(A) (2) of the Industrial Disputes (Amended) Act, 2010 (hereinafter to be referred as the Act) seeking reinstatement along-with all consequential benefits including back-wages, seniority, continuity and regularization.

2. Briefly, the case of the petitioner is that he had been engaged as Class-IV employee on daily wages basis *w.e.f.* 1.1.1997 and worked till 2001 and thereafter his services were terminated without any reason and serving any prior notice, without complying with the provisions of the Act and also without payment of any compensation. The respondent department had engaged many persons after illegal termination of the petitioner. Many juniors to the petitioner were also retained. The petitioner had completed 240 days in a calendar year. The persons namely Ram Molak Ram, Mohinder Singh, Bheem Singh, Prem Chand and many others who were junior to the petitioner were also re-instated and has been regularized by the respondents whereas no employment was offered to the petitioner. The illegal termination of the petitioner is in violation of sections 25-F, 25-G and 25-H of the Act. In the footnote, the petitioner prayed for the following relief:

> **"It is, therefore, respectfully prayed that directions may kindly be issued to the respondents to re-instate the petitioner in service along-with all consequential beenfits/relief(s) of back-wages, seniority, continuity and regularization of services besides the cost of the petition."**

3. The lis was resisted and contested on filing written reply wherein preliminary objections qua delay and latches, estoppel and there is no violation of the provisions of the Act has been taken.

4. On merits, it is submitted that the petitioner was engaged as beldar on daily wages basis for specific period. The copy of mandays chart reflects that the petitioner had worked for a brief period since 1.8.1997 instead of 1.1.1997 to 25.8.1997 instead of December, 2001 and worked for 25 days only. There is no violation of sections 25-F, 25-G and 25-H of the Act. The petitioner had left the job wilfully absenting and not reporting to his delegated duties as assigned to him. No junior person has been engaged or remained in service. The respondent prayed for the dismissal of the claim petition.

5. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those in the claim petition.

6. On elucidating the pleading of parties, the following issues were struck down by my Learned Predecessor for its final determination *vide* Court order dated 1.10.2019.

1. Whether the termination of the petitioner *w.e.f.* the year 1998 is voilative of provisions of sections 25-F, 25-G and 25-H of the Industrial Disputes Act as alleged? If so, to what relief the petitioner is entitled to? . . OPP.

2. Whether the claim petition is hit by the vice of delay and latches, the claim having been raised after a gap of 16 years, as alleged, if so its effects thereto? . .*OPR.*

3. Whether the claim petition is not maintainable, as alleged? If so its effect thereto? . .*OPR.*

4. Relief

7. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

8. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

9. For the reasons to be recorded hereinafter, while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Partly yes

Issue No. 2 : No

Issue No. 3 : No

Relief : Reference partly answered in affirmative as per operative part of the Award

REASONS FOR FINDINGS

ISSUES NO.1 & 2

10. Being interlinked and inter-connected both these issues are taken up together for discussion and decision.

11. The petitioner namely Narender Singh stepped into the witness box (PW-1) and tendered in evidence his sworn-in affidavit (PW-1/A) wherein he has reiterated almost all the averments as stated in the petition. In cross-examination, he denied that he had left the job in the year 1997.

12. (PW-2) Shri Ashwani Verma, Assistant Executive Engineer has deposed that the petitioner had worked with the department *w.e.f.* 1.8.1997 till 25.8.1998 and the first demand notice issued by the petitioner relates to 1.8.2016. He proved on record seniority list of T-mates (PW-2/A). In cross-examination, he admitted that the workers namely Molak Ram, Mohinder Singh, Devi Ram, Naresh Kumar, Rajesh Kumar have been re-engaged pursuant to the order of the Court.

13. Shri Vidya Sagar, Junior Office Assistant from the office of Labour Office Zone Shimla appeared into the witness box as (PW-3) and deposed that the demand notice was received

by the Labour office on 1.6.2016. In cross-examination he admitted that as per the record on 17.9.2017, the Labour Commissioner had passed an order (R/2) whereby the dispute was held to be non-existence being stale and belated.

14. On the other hand, the respondent examined Shri Sanjeet Kumar, Senior Assistant as (RW-1), who deposed that the petitioner worked from 1.8.1997 to 25.8.1997 as per mandays chart (R-1). The petitioner had left the job on his own. The petitioner did not complete 240 days in a calendar year and no junior person was retained. The petitioner filed the claim petition after 20 years in the year 2017. In cross-examination, he denied that the petitioner had worked from 1996 to December 2001 continuously and completed 240 days in a calendar year. He denied that the petitioner was orally terminated. It denied that the petitioner had been terminated orally without paying any compensation.

15. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

16. Shri Raj Kumar, Ld. Counsel for the petitioner strenuously argued that the junior to the petitioner were re-engaged and re-employed by the respondent. He has also brought to my notice the award passed by this Court in Application No. 92 of 2014 decided on 17.6.2016. It is also argued that the Hon'ble High Court of H.P. in CWP No. 2201/2009 along-with CWPs No. 2202, 2206, 2227, 2587 and 4427 of 2009 decided on 10.6.2010 held that when the workman had completed 240 days preceding his retrenchment notice is required to be issued under section 25-F of the Act. The plea of abandonment or relinquishment of service is always a question of intention and normally such an intention cannot be attributed to an employee without adequate evidence in that behalf. It has to be determined in the light of the surrounding circumstances of each case. Shri Raj Kumar, Ld. Counsel for the petitioner also invited my intention to the case law as reported in (2017) 1 SCC 263 titled as Basant Singh *Vs.* State of Himachal Pradesh and Ors. Wherein it has been held that the law of parity is applicable to the cases of similar situated persons referred for adjudication, to the references received from the appropriate government under section 10 without any objection with regard to delay. He argued that the case of the petitioner shall also be considered for reference ignoring objection on the ground of delay similar to Balbir Singh (Application No. 92 of 2014), Dinesh Kumar (Reference No. 1/2016) and Devi Ram (Application No. 92 of 2014).

17. Per contra, Shri Surender Sharma, Ld. Counsel for the respondents strenuously argued that the petitioner has miserably failed to prove that he had rendered continues service for 240 days in a calendar year. Since, the petitioner had workers for 25 days, hence, he is not entitled to any relief as claimed by him.

18. This is the entire case record. It is duly established on record that the petitioner was engaged as daily wager beldar. As per the petitioner, he was engaged as beldar on muster roll basis *w.e.f.* 1.1.1997 till December 2001 and had completed 240 days in a calendar year. It is alleged that the respondent had illegally terminated the services of the petitioner *w.e.f.* the year 2001. It is also alleged that the services of the petitioner had been retrenched without giving any notice for retrenchment and compensation in lieu thereof which is gross violation of the mandatory provisions of section 25-F of the Act. At the time of his termination, junior persons to him have been retained in service as such the respondent has violated the provisions of "last come first go". The names of the juniors who were retained by the respondent are Molak Ram, Mohinder Singh, Devi Ram, Naresh kumar, Rajesh Kumar and many others. It is further alleged that after the termination of the services of the petitioner the respondent had appointed fresh hands. He was not given an opportunity of re-employment. From the date of his termination, he is unemployed. He has approached the respondent for his reengagement time and again but of no avail. He is entitled for

regularization after completion of 8 years of service with all consequential benefits. The act and conduct of the respondent are illegal and unjustified and they have violated the provisions of sections 25-F, 25-G and 25-H of the Act. As per the deposition of (RW-1), it is clear that the petitioner had worked *w.e.f.* 26.12.1996 to 15.1.1997. However, during cross-examination the petitioner has categorically stated that he had worked from 26.12.1996 till March 2001. It is well settled that admission is the best piece of evidence and the case admitted needs not be proved. So, it can be safely held that the case of the respondent stands established on record that the petitioner had been engaged on 26.12.1996. A plea was taken by the respondent that the petitioner had left the job at his own free will and volition. It is well known that abandonment has to be proved like any other fact by the respondents/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. There is nothing on record to show that a notice was served upon the petitioner by the respondents calling upon him to resume the duties after he allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Therefore, the plea of abandonment raised by the respondents neither established on record nor is tenable.

19. It was claimed by the petitioner that he had worked continuously with the respondent till December 2001 without any break and had completed 240 days.

20. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In ***R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106,*** it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

21. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the February, 2004. No such record is there on the file to establish that the petitioner had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

22. Now, adverting to the other aspect of the case, Shri Raj Kumar, Ld. Counsel for the petitioner argued that after the termination of the services of the petitioner, the respondents have retained persons junior to him and also engaged fresh hands. PW-2 Shri Ishwani Verma has categorically admitted that the workers namely Molak Ram, Mahinder Singh, Devi Ram, Naresh Kumar and Rajesh Kumar have been re-engaged pursuant to the Court orders. As per the seniority list (PW-2/A), the services of Shri Molak Ram have been re-engaged in the year 2011, Devi Ram and Naresh Kumar have been re-engaged in the year 2002. This indicates that person junior to the petitioner is still serving the respondents/department. The respondents have failed to adhere to the principle of 'last come first go'. Retaining the junior at the cost of senior is nothing but unfair labour practice.

23. It was also claimed by the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondents. Except for his self serving and oral testimony, there is no other ocular or documentary, cogent, convincing and reliable evidence on the file to show that

the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are not attracted in this case. That apart and more importantly, the petitioner was not entitled to invoke the provisions of Section 25-H of the Act and seek re-employment by citing the case of other employees, who were already in employment and whose services were regularized by the respondents on the basis of their service records in terms of the rules. To my mind, the regularization of the employees already in service does not give any right to the retrenched employee so as to enable him to invoke Section 25-H of the Act for claiming re-employment in the services. The reason is that by such act the employer does not offer any fresh employment to any person to fill any vacancy in their set up, but they simply regularize the services of any employee already in service. Such an act does not amount to filling any vacancy. The expression 'employment' signifies a fresh employment to fill the vacancies, whereas the expression 'regularization of the service' signifies that the employee, who is already in service, his services are regularized as per service regulations.

24. The Ld. Counsel for the respondent contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82***, wherein it was *inter-alia* held:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

25. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as ***Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)*** will also be advantageous on this aspect of the matter.

26. In case titled as ***Assistant Engineer Rajasthan Development Corporation and another* vs. *Geetam Singh*** reported in ***2013 (136) FLR 893 (SC)***, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as ***Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651***, by relying upon the cases of ***Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177*** and ***District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)*** , it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as ***State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791,*** the Hon'ble Supreme Court has held that where a daily wager has

worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner had remained engaged with the respondents from November, 1999 utpil February 9, 2004, though he is claimed to have worked intermittently by the respondents during this period, and who had worked as a non-skilled worker and had raised industrial dispute by issuance of demand notice after more than ***eleven years*** *i.e.* demand notice was given in the year 2014. It is also pertinent to mention here that the petitioner on the date of his examination before this Court was aged about 45 years and had sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

27. In view of the discussion and findings arrived at by me above, a lump-sum compensation of Rs. 75,000/- (Rupees Seventy Five Thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues no. 1 and 2 are answered partly in the affirmative and accordingly decided in favour of the petitioner.

ISSUE NO.3

28. It has not been shown by the respondents as to how the present petition/statement of claim is not maintainable. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and decided against the respondents.

RELIEF

29. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondents are hereby directed to pay a compensation of Rs. 75,000/- (Rupees Seventy Five Thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondents to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of Jan., 2021.

(Rajesh Tomar)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

Tayab Vs. Shivom Cotspin Kala Amb

Reference No. 202 of 2021

12.1.2022

Present: Shri Prateek Kumar, Advocate vice csl. for petitioner
Shri Rahul Mahajan, Advocate with Shri Subhash Chauhan, Manager, HR for respondent.

Heard. Record perused

With the little divulgence of this Court as well as the strenuous efforts put in by the Ld. Counsel for the parties, the Industrial Dispute arose between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 202 of 2021, which stood amicably resolved by way of an amicable settlement. It has been stated at the bar by Shri Subhash Chauhan, Manager, HR for the respondent company that the respondent company has amicably settled the matter with the petitioner in full & final payment of Rs. 17,000/-, as per memorandum of settlement (R-1) and the petitioner has received the amount *vide* receipt (R-2). He also placed on record the full & final settlement receipt (R-3) and the Bank statement report of the respondent company (R-4). To this effect his statement recorded separately.

On the contrary, Ld. Counsel for the petitioner has stated *vide* separate statement that the statement made by Shri Subhash Chauhan, Manager HR is acceptable to him as the petitioner has settled the dispute with the respondent company by taking full & final dues and now nothing is pending and due.

Since, the matter stood amicably resolved between the parties, therefore, nothing survives in the present industrial dispute. The reference is answered accordingly and the award is passed as per the settlement. The statements of both the parties and memorandum of settlement (R-1), receipt (R-2), full& final settlement receipt (R-3) and Bank account statements report (R-4) shall form part and parcel of this award. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

12.1.2022.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

Gaurav Vs. Shivom Cotspin Kala Amb.

Reference No. 203 of 2021

12.1.2022

Present: Shri Prateek Kumar, Advocate vice csl. for petitioner.
Shri Rahul Mahajan, Advocate with Shri Subhash Chauhan, Manager, HR for respondent.

Heard. Record perused

With the little divulgence of this Court as well as the strenuous efforts put in by the Ld. Counsel for the parties, the Industrial Dispute arose between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 206 of 2021, which stood amicably resolved by way of an amicable settlement. It has been stated at the bar by Shri Subhash Chauhan, Manager, HR for the respondent company that the respondent company has amicably settled the matter with the petitioner in full & final payment of Rs. 19,190/-, as per full and final settlement receipt (R-1), which has been duly accepted by the petitioner. He has placed on record the Bank statement report of the respondent company (R-2). To this effect his statement recorded separately.

On the contrary, Ld. Counsel for the petitioner has stated *vide* separate statement that the statement made by Shri Subhash Chauhan, Manager HR is acceptable to him as the petitioner has settled the dispute with the respondent company by taking full & final dues and now nothing is pending and due.

Since, the matter stood amicably resolved between the parties, therefore, nothing survives in the present industrial dispute. The reference is answered accordingly and the award is passed as per the settlement. The statements of both the parties and full & final settlement receipt (R-1) and Bank account statements report (R-2) shall form part and parcel of this award. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

12.1.2022.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

Sagar Kumar Vs. Shivom Cotspin Kala Amb.

Reference No. 204 of 2021

12.1.2022

Present: Shri Prateek Kumar, Advocate vice csl. for petitioner.
Shri Rahul Mahajan, Advocate with Shri Subhash Chauhan, Manager, HR for respondent.

Heard. Record perused

With the little divulgence of this Court as well as the strenuous efforts put in by the Ld. Counsel for the parties, the Industrial Dispute arose between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 204 of 2021, which stood amicably resolved by way of an amicable settlement. It has been stated at the bar by Shri Subhash Chauhan, Manager, HR for the respondent company that the respondent company has amicably settled the matter with the petitioner in full & final payment of Rs. 22,000/-, as per memorandum of settlement (R-1) and the petitioner has received the amount

vide receipt (R-2). He also placed on record the full & final settlement receipt (R-3) and the Bank statement report of the respondent company (R-4). To this effect his statement recorded separately.

On the contrary, Ld. Counsel for the petitioner has stated *vide* separate statement that the statement made by Shri Subhash Chauhan, Manager HR is acceptable to him as the petitioner has settled the dispute with the respondent company by taking full & final dues and now nothing is pending and due.

Since, the matter stood amicably resolved between the parties, therefore, nothing survives in the present industrial dispute. The reference is answered accordingly and the award is passed as per the settlement. The statements of both the parties and memorandum of settlement (R-1), receipt (R-2), full& final settlement receipt (R-3) and Bank account statements report (R-4) shall form part and parcel of this award. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

12.1.2022.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

FurkanVs. Shivom Cotspin Kala Amb.

Reference No. 205 of 2021

12.1.2022

Present: Shri Prateek Kumar, Advocate vice csl. for petitioner.
Shri Rahul Mahajan, Advocate with Shri Subhash Chauhan, Manager, HR for respondent.

Heard. Record perused

With the little divulgence of this Court as well as the strenuous efforts put in by the Ld. Counsel for the parties, the Industrial Dispute arose between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 205 of 2021, which stood amicably resolved by way of an amicable settlement. It has been stated at the bar by Shri Subhash Chauhan, Manager, HR for the respondent company that the respondent company has amicably settled the matter with the petitioner in full & final payment of Rs. 19,000/-, as per full and final settlement receipt (R-1), which has been duly accepted by the petitioner. He has placed on record the Bank statement report of the respondent company (R-2). To this effect his statement recorded separately.

On the contrary, Ld. Counsel for the petitioner has stated *vide* separate statement that the statement made by Shri Subhash Chauhan, Manager HR is acceptable to him as the petitioner has settled the dispute with the respondent company by taking full & final dues and now nothing is pending and due.

Since, the matter stood amicably resolved between the parties, therefore, nothing survives in the present industrial dispute. The reference is answered accordingly and the award is passed as per

the settlement. The statements of both the parties and full & final settlement receipt (R-1) and Bank account statements report (R-2) shall form part and parcel of this award. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

12.1.2022.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

Rajesh Kumar Vs. Shivom Cotspin Kala Amb.

Reference No. 206 of 2021

12.1.2022

Present: Shri Prateek Kumar, Advocate vice csl. for petitioner.
Shri Rahul Mahajan, Advocate with Shri Subhash Chauhan, Manager, HR for respondent.

Heard. Record perused

With the little divulgence of this Court as well as the strenuous efforts put in by the Ld. Counsel for the parties, the Industrial Dispute arose between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 206 of 2021, which stood amicably resolved by way of an amicable settlement. It has been stated at the bar by Shri Subhash Chauhan, Manager, HR for the respondent company that the respondent company has amicably settled the matter with the petitioner in full & final payment of Rs. 18,225/-, as per memorandum of settlement (R-1) and the petitioner has received the amount *vide* receipt (R-2). He also placed on record the full & final settlement receipt (R-3) and the Bank statement report of the respondent company (R-4). To this effect his statement recorded separately.

On the contrary, Ld. Counsel for the petitioner has stated *vide* separate statement that the statement made by Shri Subhash Chauhan, Manager HR is acceptable to him as the petitioner has settled the dispute with the respondent company by taking full & final dues and now nothing is pending and due.

Since, the matter stood amicably resolved between the parties, therefore, nothing survives in the present industrial dispute. The reference is answered accordingly and the award is passed as per the settlement. The statements of both the parties and memorandum of settlement (R-1), receipt (R-2), full& final settlement receipt (R-3) and Bank account statements report (R-4) shall form part

and parcel of this award. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

12.1.2022.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IsranVs. ShivomCotspin Kala Amb.

Reference No. 207 of 2021

12.1.2022

Present: Shri Prateek Kumar, Advocate vice csl. for petitioner.
Shri Rahul Mahajan, Advocate with Shri Subhash Chauhan, Manager, HR for respondent.

Heard. Record perused

With the little divulgence of this Court as well as the strenuous efforts put in by the Ld. Counsel for the parties, the Industrial Dispute arose between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 207 of 2021, which stood amicably resolved by way of an amicable settlement. It has been stated at the bar by Shri Subhash Chauhan, Manager, HR for the respondent company that the respondent company has amicably settled the matter with the petitioner in full & final payment of Rs. 17,000/-, as per memorandum of settlement (R-1) and the petitioner has received the amount *vide* receipt (R-2). He also placed on record the full & final settlement receipt (R-3) and the Bank statement report of the respondent company (R-4). To this effect his statement recorded separately.

On the contrary, Ld. Counsel for the petitioner has stated *vide* separate statement that the statement made by Shri Subhash Chauhan, Manager HR is acceptable to him as the petitioner has settled the dispute with the respondent company by taking full & final dues and now nothing is pending and due.

Since, the matter stood amicably resolved between the parties, therefore, nothing survives in the present industrial dispute. The reference is answered accordingly and the award is passed as per the settlement. The statements of both the parties and memorandum of settlement (R-1), receipt (R-2), full& final settlement receipt (R-3) and Bank account statements report (R-4) shall form part and parcel of this award. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

12.1.2022

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

SabratiVs. Shivom Cotspin Kala Amb.

Reference No. 208 of 2021

12.1.2022

Present: Shri Prateek Kumar, Advocate vice csl. for petitioner
Shri Rahul Mahajan, Advocate with Shri Subhash Chauhan, Manager, HR for respondent.

Heard. Record perused

With the little divulgence of this Court as well as the strenuous efforts put in by the Ld. Counsel for the parties, the Industrial Dispute arose between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 208 of 2021, which stood amicably resolved by way of an amicable settlement. It has been stated at the bar by Shri Subhash Chauhan, Manager, HR for the respondent company that the respondent company has amicably settled the matter with the petitioner in full & final payment of Rs. 17,188/-, as per full and final settlement receipt (R-1), which has been duly accepted by the petitioner. He has placed on record the Bank statement report of the respondent company (R-2). To this effect his statement recorded separately.

On the contrary, Ld. Counsel for the petitioner has stated *vide* separate statement that the statement made by Shri Subhash Chauhan, Manager HR is acceptable to him as the petitioner has settled the dispute with the respondent company by taking full & final dues and now nothing is pending and due.

Since, the matter stood amicably resolved between the parties, therefore, nothing survives in the present industrial dispute. The reference is answered accordingly and the award is passed as per the settlement. The statements of both the parties and full & final settlement receipt (R-1) and Bank account statements report (R-2) shall form part and parcel of this award. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

12.1.2022

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

Ikran Vs. Shivom Cotspin Kala Amb.

Reference No. 209 of 2021

12.1.2022

Present: Shri Prateek Kumar, Advocate vice csl. for petitioner.

Shri Rahul Mahajan, Advocate with Shri Subhash Chauhan, Manager, HR for respondent.

Heard. Record perused

With the little divulgence of this Court as well as the strenuous efforts put in by the Ld. Counsel for the parties, the Industrial Dispute arose between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 209 of 2021, which stood amicably resolved by way of an amicable settlement. It has been stated at the bar by Shri Subhash Chauhan, Manager, HR for the respondent company that the respondent company has amicably settled the matter with the petitioner in full & final payment of Rs. 16,500/-, as per memorandum of settlement (R-1) and the petitioner has received the amount *vide* receipt (R-2). He also placed on record the full & final settlement receipt (R-3) and the Bank statement report of the respondent company (R-4). To this effect his statement recorded separately.

On the contrary, Ld. Counsel for the petitioner has stated *vide* separate statement that the statement made by Shri Subhash Chauhan, Manager HR is acceptable to him as the petitioner has settled the dispute with the respondent company by taking full & final dues and now nothing is pending and due.

Since, the matter stood amicably resolved between the parties, therefore, nothing survives in the present industrial dispute. The reference is answered accordingly and the award is passed as per the settlement. The statements of both the parties and memorandum of settlement (R-1), receipt (R-2), full& final settlement receipt (R-3) and Bank account statements report (R-4) shall form part and parcel of this award. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

12.1.2022

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

Rajni Vs. ShivomCotspin Kala Amb.

Reference No. 210 of 2021

12.1.2022

Present: Shri Prateek Kumar, Advocate vice csl. for petitioner.
Shri Rahul Mahajan, Advocate with Shri Subhash Chauhan, Manager, HR for respondent.

Heard. Record perused

With the little divulgence of this Court as well as the strenuous efforts put in by the Ld. Counsel for the parties, the Industrial Dispute arose between the parties on account of the reference

received from the appropriate government, which was duly registered with this office, as Reference Petition No. 210 of 2021, which stood amicably resolved by way of an amicable settlement. It has been stated at the bar by Shri Subhash Chauhan, Manager, HR for the respondent company that the respondent company has amicably settled the matter with the petitioner in full & final payment of Rs. 24,000/-, as per memorandum of settlement (R-1) and the petitioner has received the amount *vide* receipt (R-2). He also placed on record the full & final settlement receipt (R-3) and the Bank statement report of the respondent company (R-4). To this effect his statement recorded separately.

On the contrary, Ld. Counsel for the petitioner has stated *vide* separate statement that the statement made by Shri Subhash Chauhan, Manager HR is acceptable to him as the petitioner has settled the dispute with the respondent company by taking full & final dues and now nothing is pending and due.

Since, the matter stood amicably resolved between the parties, therefore, nothing survives in the present industrial dispute. The reference is answered accordingly and the award is passed as per the settlement. The statements of both the parties and memorandum of settlement (R-1), receipt (R-2), full& final settlement receipt (R-3) and Bank account statements report (R-4) shall form part and parcel of this award. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

12.1.2022

RAJESH TOMA,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

Naseem Vs. Shivom Cotspin Kala Amb.

Reference No. 211 of 2021

12.1.2022

Present: Shri Prateek Kumar, Advocate vice csl. for petitioner.
Shri Rahul Mahajan, Advocate with Shri Subhash Chauhan, Manager, HR for respondent.

Heard. Record perused

With the little divulgence of this Court as well as the strenuous efforts put in by the Ld. Counsel for the parties, the Industrial Dispute arose between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 205 of 2021, which stood amicably resolved by way of an amicable settlement. It has been stated at the bar by Shri Subhash Chauhan, Manager, HR for the respondent company that the respondent company has amicably settled the matter with the petitioner in full & final payment of Rs. 19,000/-, as per full and final settlement receipt (R-1), which has been duly accepted by the petitioner. He has placed on record the Bank statement report of the respondent company (R-2). To this effect his statement recorded separately.

On the contrary, Ld. Counsel for the petitioner has stated *vide* separate statement that the statement made by Shri Subhash Chauhan, Manager HR is acceptable to him as the petitioner has settled the dispute with the respondent company by taking full & final dues and now nothing is pending and due.

Since, the matter stood amicably resolved between the parties, therefore, nothing survives in the present industrial dispute. The reference is answered accordingly and the award is passed as per the settlement. The statements of both the parties and full & final settlement receipt (R-1) and Bank account statements report (R-2) shall form part and parcel of this award. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

12.1.2022

Sd/-
RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SH. RAJESH TOMAR PRESIDING JUDGE
H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Application Number : 40 of 2018
Instituted on : 20.4.2018
Decided on : 13.1.2022

1. Arun Thakur s/o Shri Dharam Singh, r/o Village Budhwin, Post Office Galore, Tehsil Nadaun, District Hamirpur, H.P.

2. Rajeevan Kumar s/o Shri Phalatu Ram, r/o Village and P.O. Gadhoroli, Tehsil Fatehpur, Kangra, H.P.

3. Surinder Singh s/o Shri Pritam Singh, r/o Village Jallari, P.O .Sehwan, Tehsil Shahpur, District Kangra H.P.

4. Sandeep Kumar s/o Shri Subhas Chand, r/o Village Bharnoli, P.O. Sehwan, Tehsil Jawali, District Kangra H.P.

5. Manjit Singh s/o Shri Kuldeep Singh, r/o Village Kehrian, P.O. and Tehsil Jawali, District Kangra H.P.

6. Keshav Sharma s/o Shri Devi Chand, r/o Village Nawa, P.O. Hanuman Badog, Tehsil Arki District Solan, H.P.

7. Desh Raj s/o Shri Hem Singh, r/o Village Banal P.O. Baroti, Tehsil Dharmapur, District Mandi, H.P.

8. Subhash Kumar s/o Shri Sita Ram, r/o Village Parnali, P.O. Uhal, Tehsil Touni Devi, District Hamirpur, H.P. . .*Applicants.*

Versus

M/s Zen Technologies Ltd., Ward No. 06, Ram Shehar Road, Nalagarh, District Solan, HP through its Factory Manager . .*Respondent.*

Complaint under section 33-A of the Industrial Disputes Act

For the Applicants : Shri H.R. Thakur, Ld. Advocate
For the Respondent : Shri Rajesh Kashyap, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) for setting aside the impugned order of termination of the workmen from the company being illegal and inoperative and the complainant be reinstated *w.e.f.* illegal termination and further the respondent be directed to pay full back-wages and consequential service benefits.

2. Material facts necessary for the disposal of the present petition are thus that the workers of the respondent company raised demand notice before the Labour Inspector, Nalagarh raising various issues regarding their service conditions. During the pendency of the demand notice, the respondent company transferred the petitioners to Hyderabad just to put pressure to withdraw their demand notice. It is pertinent to mention that the company is exploiting the workers and refusing them to pay different allowances which they are entitled to get. To the utter surprise of the petitioners, during the pendency of the conciliation proceedings before the Labour Inspector, Nalagarh, the petitioners received the retrenchment notice dated 29.8.2017, sent by the respondent company. Thereafter, the petitioners filed CWP before the Hon'ble High Court of H.P. to refer the dispute to this Court. The Hon'ble High Court of HP stayed the retrenchment notice. After filing of the writ petition, the Labour Inspector submitted the report whereby the Labour Commissioner referred the dispute to this Court *vide* notification dated 28.10.2017. The writ petition was disposed off by the Hon'ble High Court *vide* order dated 22.11.2017 reserving the right in favour of the complainant to approach this Court for appropriate relief. The action of the respondent company in transferring the petitioners during the pendency of the proceedings is bad in the eyes of law. The illegal orders of transferring the petitioners to Hyderabad and thereafter their retrenchment during the pendency of proceedings is illegal, null and void.

3. The following prayer clause has been appended in the footnote of the petition, which reads as under:—

> "I**t is therefore demanded that the illegal and impugned order of termination of workman from the company be set aside being illegal and in-operative and the complainants be reinstated".**

4. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections cause of action and not come to the court with clean hands have been raised.

5. On merits, it is submitted that the petitioners raised demand notice on 1.7.2017 before the Labour Inspector. The respondents had duly submitted their reply in detail *vide* letter dated 2.8.2017. There was a bilateral agreement executed between the workmen and the management/ in the meeting or in conciliation proceedings, the workmen never express their desire to join at Hyderabad when the Labour officer had asked them to join, the workmen flatly refused to join at Hyderabad. It is submitted that there was no work at Nalagarh unit in June 2017. The demands

raised by the workmen is of no consequences. The management had no other option in the circumstances of no work and refusal to get transferred to Hyderabad but to retrench the workmen. It is denied that there is violation of any provisions of the Act. The case of the respondent is covered under chapter VA Section 25-FF-A of the Act. It is therefore, prayed that the claim filed by the petitioners may kindly be dismissed.

6. While filing rejoinder, the petitioners controverted the averments made thereto in the reply and reaffirmed and reiterated those in the petition.

7. On elucidating the pleading of parties, the following issues were struck down by my Learned Predecessor for its final determination *vide* Court order dated 4.8.2018.

1. Whether the retrenchment of the petitioners during the pendency of conciliation proceedings is in violation of Section 33 of the Industrial Disputes Act, as alleged? . .*OPA*.

2. Whether the petitioners are entitled for re-instatement in service from the date of their illegal retrenchment, as alleged? . .*OPA*.

3. If issue No. 1 is proved in affirmative, to what relief of service benefits the petitioners are entitled? . .*OPA*.

4. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:—

Issue No. 1 : Yes

Issue No. 2 : No

Issue No. 3 : Entitled to lump sum compensation of Rs.

Relief : Application allowed, as per operative part of order.

REASONS FOR FINDINGS

ISSUES NO.1 to 3.

11. All these issues are intermingled and inter-connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. In support of their case, the petitioners examined as many as three witnesses. (PW-1) Shri Rakesh Kumar, Labour Inspector Nalagarh, deposed that the conciliation proceedings between the petitioners Arun Thakur & Ors. And the respondent management before the Labour Inspector, Nalagarh commenced on 17.7.2017 and were concluded on 6.10.2017 and proved on record the conciliation proceedings (PW-1/A). In cross-examination, he stated that the demand notice was raised by the petitioners on 10.7.2017.

13. (PW-2) Shri Chinta Madangopal Swami, Manager Legal from respondent company stepped into the witness box to depose that he has not brought the demand notice raised by the petitioners because the demand notice was not sent to the management. The services of the petitioners were retrenched *vide* notices dated 14th September, 2017.

14. Shri Manjeet Singh (one of the petitioner) stepped into the witness dock as (PW-3) and tendered in evidence his affidavit (PW-3/A), whereby he has reiterated almost all the averments as made in the petition. He also tendered in evidence notice dated 10.7.2017 (Mark P-1), copy of retrenchment notice dated 29.8.2017 (PW-3/B) alongwith copy of statement of compensation (Mark P-3) and Cheque (Mark P-4).

15. In cross-examination, he admitted that they have not raised the issue of transfer and retrenchment in the demand notice (Mark P-1). He admitted that all the petitioners have received the retrenchment amount. He admitted that prior to their transfer and retrenchment, they all had worked at Hyderabad unit. He denied that the management had written a letter to the petitioners that all the expenses of transfer will be borne by them apart from the salary. He denied that they have refused to join at Hyderabad unit after the issuance of transfer letters.

16. On the other hand, the respondent examined one Shri Madan Gopal as (RW-1), who tendered in evidence his affidavit (RW-1/A. He also tendered in evidence letter dated 3.8.2017 (Mark RA), letter dated 2.8.2017 (Mark RB), letter dated 29.8.2017 (Mark RC), letter dated 3.5.2018 (Mark RD), letter dated 28.2.2018 (Mark RE), letter dated 20.2.2018 (Mark RF), letter dated 20.3.2018 (Mark RG), letter dated 20.2.2018 (Mark RH) letter dated 15.2.2018 (Mark RJ) and chart (Mark RK).

17. In cross-examination, he admitted that the conciliation proceedings were pending before the Conciliation Officer who *vide* letter dated 11.7.2017, had informed the respondent management about such proceedings. He further admitted that the respondent company attended the proceedings before the Conciliation Officer on 3.8.2017 and 4.8.2017. He also admitted that the conciliation proceedings were adjourned till 25.8.2017. He admitted that the workmen were transferred to Hyderabad on 7.8.2017. He admitted the conciliation proceedings initiated before the Conciliation Officer dated 3.8.2017 (PX), 4.8.2017 (PY) and 25.8.2017 (PZ).

18. This is the entire oral as well as documentary evidence led from the side of the parties.

19. This is the entire evidence oral as well as documentary led from the side of the parties.

20. Shri H.R Thakur, Ld. Counsel for the petitioners contended with all vehemence that the transfer of as many as eight workers from its Nalagarh Unit to Hyderabad during the pendency of conciliation proceedings before the Labour Inspector Nalagarh is in clear cut violation of provisions of Section 9-A and 33 of the Act. The transfer orders are malafide being illegally issued by the respondent management just to cause harassment and victimization to the entire workers. Admittedly, the demand notice dated 10.7.2017 will clinch the issue. The proceedings were pending before the Labour Inspector Nalagarh from 17.7.2017 till 6.10.2017. He further contended that during the pendency of conciliation proceedings before the Conciliation Officer, the

respondent management had illegally and arbitrarily terminated the services of the petitioners *vide* retrenchment notice dated 29.8.2017. There is definitely change in the condition of service firstly by transferring and secondly by terminating the services of the petitioners during the pendency of conciliation proceedings.

21. Learned Counsel for the petitioner further contended that the transferring and terminating the services of eight workers during the pendency of the conciliation proceedings has not only violated the provisions of Sections 9A and 33 of the Act. It is contended that the respondent management had contravened the mandatory provisions of the Act by causing victimization to the workers and by adopting unfair labour practice as all the petitioners have been transferred during the pendency of the Conciliation proceedings. It is therefore prayed that the impugned order dated 29.8.2017 may kindly be set aside and quashed and the respondent be directed to pay full back-wages, seniority and all other consequential service benefits.

22. ***Per contra***, Shri Rajesh Kashyap, Learned Counsel appearing for the respondent strenuously argued that there was a bilateral meeting held during the conciliation proceedings whereby the petitioners were asked to join their duties at Hyderabad on 25.8.2017 as ordered by the Labour Conciliation Officer. However, the petitioners did not adhere the orders of the Labour Conciliation Officer. There were no conciliation proceedings pending between the parties. The Learned counsel for the respondent had also carried me through the various salient provisions of the Act such as section 33, 33-A, section 10, section 23, section 9, Section 25-T, section 25-O and section 24 of the Act. It is argued that as per the provisions of section 10 of the Act, this Court is a referral Court and exercise its jurisdiction only on the receipt of reference from the appropriate government. The word "transfer" is not find its place anywhere in section 9-A. In case of contravention of Section 25-T, punishment is provided. Section 25-U, Section 34 of the Act provides that such contravention is travel by Metropolitan Magistrate or a Judicial Magistrate 1st Class. It is therefore prayed that the petition filed by the petitioners may kindly be dismissed.

23. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner union, as well Learned Senior Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

25. Before, proceeding further, it is important to reproduce the reference notification sent *vide* notification No. 11-2/93(Lab)ID/2019/Nalagarh/Arun & Ors. dated 23.10.2019, by the appropriate government for adjudication:

> **"Whether demands raised by Shri Arun Thakur and seven others workmen** vide **demand notice dated 10.7.2017 regarding 20% annual increment, residential accommodation or House Rent @ 3000/- per month, annual bonus @ 20% and to pay them DA linked with consumer price index before the Factory Manager, M/s Zen Technologies Ltd. Ward No. 06, Ram Shehar, Road Nalagarh, District solan, H.P. (Registered office M/s Zen Technologies Ltd., B-43, Industrial Estate Sanath Nagar, Hyderabad, Telangana India 500018) are legal and justified? If yes, what relief the aggrieved workmen are entitled to from the above management? If not, its effect?"**

26. At the very inception, the first and foremost point which comes to the fore for its due determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

27. Before, proceeding further, I deem it appropriate to re-cast the provisions of Section 2k of the act which reads as sunder:

> **"**(k) **"industrial dispute" means** a**ny dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen,**

which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

28. On plain reading of the aforesaid provision of law where there arises any sort of dispute or difference between the employer and workmen which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioners were working with the respondent management at Nalagarh Unit. There is again no denial to the fact that the petitioners have raised their demands by issuing the demand notice dated 10.7.2017. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Inspector Nalagarh. There is again no denial to the fact that the petitioners were ordered to be transferred from Nalagarh to Hyderabad and subsequently all the petitioners have been retrenched *vide* retrenchment notice dated 29.8.2017.

29. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 10.7.2017, a copy of which has also been duly supplied to the Labour Inspector Nalagarh addressed to the respondent company raising thereby as many as three demands, the demand notice meant under section 2k of the Act.

30. The pendency of litigation it is again manifestly clear from the fact that the Labour-*cum*-Conciliation Officer, Nalagarh while appearing into the witness box as (PW-1) clearly stated that the conciliation proceedings commenced on 17.7.2017 and were concluded on 6.10.2017.

31. To be more precise in its eternity, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of order dated 29.8.2017.

32. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not a condition of service. The petitioner union belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always understood and construed as an incidence of service, but, the accepted principle is that it is also an implied condition of service. However, such transfer is to an incidence of service is to be made in on administrative exigencies. Normally, the transfer order should not be interfered with except where the transfer has been made in indicative and malafide manner. Since, in the instant case all eight petitioners have been transferred from Nalagarh unit to Hyderabad unit during the pendency of the conciliation proceedings without any prior permission from the competent authority which is illegal and unfair.

33. More so, to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be subject to an exception that it can be made with the express permission in writing from the authority. The provisions of Sections 33 and 33-A makes it evidently clear on record that the use of word "shall" makes it mandatory on

the part of the authority to comply with the provisions of law. It is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in letter and spirit.

34. Verily, the entire case put forth by the petitioners union has been halfheartedly admitted by respondent witness (RW-1). In cross-examination, he admitted that the conciliation proceedings were pending before the Conciliation Officer who *vide* letter dated 11.7.2017, had informed the respondent management about such proceedings. He further admitted that the respondent company attended the proceedings before the Conciliation Officer on 3.8.2017 and 4.8.2017. He also admitted that the conciliation proceedings were adjourned till 25.8.2017. He admitted that the workmen were transferred to Hyderabad on 7.8.2017. He admitted the conciliation proceedings initiated before the Conciliation Officer dated 3.8.2017 (PX), 4.8.2017 (PY) and 25.8.2017 (PZ). More so, from the testimony of (RW-1), it is clearly established that the conciliation proceedings were pending before the Conciliation officer, Nalagarh. To rebut the case of the petitioners the only grouse from the side of the respondent is that since one year prior to June 2017, there was no work at Nalagarh Unit. The respondent management were pursuing their business activities at Nalagarh without any work. In such situation it is not physible for respondent management to stay at Nalagarh Unit and as such ordered the transfers of the petitioners from its Nalagarh Unit to Hyderabad Unit for the reasons that the petitioners workmen had already worked at Hyderabad unit for about ten month and had returned to Nalagarh in June 2017. The petitioners sat idle without any work, however, they were paid wages in full without any work. It is particular to mention that the similar position has been reiterated by the respondent management to the conciliation officer that the respondent management was trying to procure orders for the Nalagarh Unit but failed in its attempt, therefore, the respondent management ordered the transfers of its workmen to its Hyderabad Unit. Time and again the respondent management had tried their level best to convenience the Labour Officer to close the proceedings. In any case various codal formalities are required for closing down its unit at Nalagarh subject to fulfilment of salient provisions of the Act which in the case in hand has not been complied in its letter and sprit.

35. Keeping in view the distinct facts and circumstances and evidence on record as well prevailing situation as emerged on account of closing down of its Nalagarh unit as well as bearing in mind the demands raised by the petitioners *vis-à-vis* the issuance of transfer orders during the pendency of conciliation proceedings before the Labour-*cum*-conciliation Officer as well as issuance of retrenchment notice by terminating the services of the petitioners *vide* retrenchment notice dated 29.8.2017, I am of the considered opinion that both ends of justice shall meet in case the petitioners are granted lump sum compensation. Accordingly, both these issues are decided in favour of the petitioner union and against th respondent.

ISSUE NO.3

36. In support of this issue no specific evidence has been led by the respondent company which could go to show as to how the present petition is not maintainable in the present form. However, by aggrieved with the transfer order dated 1.8.2021 issued by the respondent management, the present petition has been filed by the workers of petitioner union which is legally maintainable in the present form. Thus, this issue is decided against the respondent.

FINAL ORDER/RELIEF.

37. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33A of the Act is **allowed**. Resultantly, the **transfer order dated 1.8.2021 is hereby set aside.** The respondent company is directed to **allow all 126 transferred workers to work at place Unit-II as they were working prior to their transfers**. The respondent company is further

directed to **pay full salary to all 126 transferred workers** w.e.f. **1.8.2021 till the date of their joining along-with all consequential service benefits**.

38. The record produced from the office of Labour-*cum*-Conciliation officer, Baddi, as retained by this Court on 23.11.2021 is also hereby ordered to be transmitted/remitted back to the concerned authority forthwith. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 9th day of December 2021

Sd/-
RAJESH TOMA,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE RAJESH TOMAR PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA.**

Reference Number	:	149 of 2019
Instituted on	:	28.11.2019
Decided on	:	13.1.2022

Umesh Sharma s/o late Shri Layak Ram r/o Village Bagi, Tehsil Kotkhai, District Shimla, HP. . .*Petitioner.*

Versus

The Divisional Forest Officer, Forest Division, Theog, District Shimla, H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner	:	Shri R.K. Khidtta, Advocate
For the Respondent	:	Shri Nitin Soni, ADA.

AWARD

The following reference *vide* notification dated 18.11.2019 has been received from the appropriate government for obtaining final judicial verdict, which reads as under:

"**Whether oral termination of services of Shri Umesh Sharma s/o late Shri Layak Ram r/o Village Bagi, Tehsil Kotkhai, District Shimla, HP by the Divisional Forest Officer, Forest Division, Theog District Shimla H.P.** w.e.f. **1.5.2019 without complying with the provisions of the Industrial Disputes Act 1947, is legal and justified ? If not, what amount of back-wages, seniority, past service benefits and regularization the above worker is entitled to from the above employer?"**.

2. Briefly stated facts necessary for the disposal of the present reference as disclosed from the statement of claim are thus that the petitioner was engaged as daily wages beldar at Kala (Bareonghat) beat, under the respondent in the year 2007 and worked as such till 30.4.2019 continuously. The services of the petitioner have been terminated illegally by the respondent on 1.5.2019 without complying the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act). The petitioner has completed 240 days in each calendar year. The petitioner has challenged his illegal termination by raising demand notice before the Labour-*cum*-Conciliation Officer. The termination of the services of the petitioner without holding any enquiry and without complying with the mandatory provisions of the Act is illegal. The petitioner is un-employed. The respondent has violated the principles of "last come first go" as at the time of his termination, junior persons to him were working with the respondent department. The termination of his services tantamount to unfair labour practice of which the petitioner is a victim and the action of the respondent in terminating his services is against the principles of natural justice. The following relief clause has been appended in the footnote of the claim petition:

> "**In view of submissions made hereinabove, it is therefore most respectfully prayed that the illegal termination order dated 1.5.2019 passed by the respondent department may kindly be set aside and the petitioner may kindly be re-instated in service** w.e.f. **1.5.2019 with all consequential service benefits such as continuity, full back-wages and other service benefits may also be given to the petitioner. The respondent may also be directed to pay damages to the petitioner to the tune of Rs. 2,00,000/- further the respondent department may also be burdened with the cost of litigation amounting to Rs. 25000/-".**

3. The lis was resisted and contested on behalf of the respondent by filing written reply to the claim petition on *inter-alia* preliminary objections of maintainability on account of time barred and not come to the Court with clean hands.

4. On merits, it is submitted that the petitioner was engaged for nursery work at Kalala Nursery on seasonal basis. It is denied that he had worked as such till 30.4.2019. The respondent had not terminated the services of the petitioner but he has left the job at his own. The nursery work was closed in the year 2018 due to non-availability of funds. The petitioner had worked from the year 2007 to 2017 but not completed 240 days except in the year 2016. The seasonal work was over as the funds are not available. Thus, it is prayed that the claim petition filed by the petitioner be dismissed.

5. While filing rejoinder, the petitoiner controverted the averments made thereto in the reply and reaffirmed and reiterated those in the statement of claim.

6. On elucidating the pleading of parties, the following issues were struck down by my Learned Predecessor for its final determination *vide* Court order dated 30.12.2020.

1. Whether the termination of the petitioner *w.e.f.* 1.5.2019 is violative of the provisions of 25-F, 25-G and 25-H of the Industrial Disputes Act, as alleged? If so, to what relief the petitioner is entitled to? . .*OPP.*

2. Whether the claim is not maintainable as the petitioner is stated to have concealed the true and material facts from this Court, as alleged? If so, its effect thereto? . .*OPR.*

3. Whether the claim is bad as the petitioner is alleged to have been engaged for seasonal work and has not completed 240 days in any calendar year except during 2016, as alleged? If so, its effect thereto? . .*OPR.*

4. Relief

7. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

8. I have heard the Ld. Counsel for the parties and also gone through the record of the case carefully.

9. For the reasons to be recorded hereinafter, while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1 : Partly Yes

Issue No. 2 : No

Issue No. 3 : No

Relief : Reference partly

answered in favour of the petitioner as per operative part of the Award

REASONS FOR FINDINGS

ISSUES NO. 1 & 3.

10. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

11. The petitioner namely Shri Umesh Sharma, stepped into the witness box as (PW-1) and tendered in evidence his affidavit (PW-1/A) wherein he reiterated almost all the averments as stated in the claim petition. He also filed certain documents *i.e* demand notice (PW-1/B) and reply (PW-1/C). He stated that Bimla, Keshav Ram and PyareLal who were engaged after him are still working with the respondent and they have been regularized. In cross-examination, he denied that he had been engaged for seasonal work in the nursery. He further denied that he had not worked continuously till 20.4.2019. He denied that he had not been engaged for routine work and his engagement was dependent only on works and funds available with the department. He denied that he had abandoned the job and he was not terminated by the respondent. He admitted that the nursery in which he was working had been closed in 2018. He denied that he had not completed 240 days in any of the years except the year 2016. He denied that Bimla, Keshav Ram and PyareLal were engaged prior to his engagement.

12. On the contrary, the respondent department has examined two witnesses. (RW-1) Shri Gopal Singh, Deputy Ranger, GhoondBalsan forest Range, who tendered in evidence his affidavit (RW-1/A) wherein he supported all the contents as made in the reply. He also tendered in evidence mandays chart dated 4.9.2021 (RW-1/B). In cross-examination he admitted that Umesh Kumar was engaged in the year 2007 and worked as such till 30.4.2019. He feigned ignorance that the workers engaged with the petitioner are still working with the department. He denied that Bimla, Keshav Ram and PyareLal junior to the petitioner are still working with the department. He admitted that no notice was issued to the petitioner by him to resume his duties. He denied that the petitioner had not abandoned the job but he was terminated from service by the department in an illegal manner.

13. Shri Bhup Ram, Forest Guard, Block Office KalalaKotkhai Range, Theog appeared into the witness box as (RW-2) and tendered in evidence his affidavit (RW-2/A). In cross-

examination, he feigned ignorance that Umesh Sharma was engaged as beldar in the year 2007 and worked as such till 30.4.2019. He denied that the petitioner was terminated on 1.5.2019. He feigned ignorance that Bimla, Keshav Ram and PyareLal junior to the petitioner are still working with the department. He admitted that no notice was issued to the petitioner by him to resume his duties. He denied that the petitioner had not abandoned the job but he was terminated from service by the department in an illegal manner.

14. Shri R.K. Khidtta, Ld. Counsel for the petitioner strenuously argued that the petitioner had worked till 30.4.2019 and the oral termination of the services of the petitioner by the respondent *w.e.f.* 1.5.2019 without complying with the provisions of the Act, is illegal and unjustified, hence, the petitioner is entitled to all consequential service benefits including full back-wages. He prayed that the petition may kindly be allowed.

15. *Per contra*, Shri Nitin Soni, Ld. ADA for respondent contended that the petitioner had left the job at his own, hence, he is guilty of an act of abandonment. The petitioner has miserably failed to prove his case. It is therefore prayed that the petition be dismissed by answering the reference in negative.

16. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

17. At the very out-set, the case of the petitioner is manifestly clear to the effect that he was engaged in the year 2007 as admitted by the respondent. Though, there is no office order has been placed on record. It has been admitted by the respondent that the petitioner was engaged as beldar. Similar is the position as emerged from the mandays chart (RW-1/B) wherein the petitioner was shown to be engaged in the year 2007. The petitioner continued to work with the respondent after his initial engagement in the year 2007 as permandays chart (RW-1/B) till 2017. His services were terminated without issuing any notice or conducting any enquiry. The petitioner was a workman, which fact has not been denied. In these circumstances, the engagement of the petitioner was to be regulated by the Industrial Disputes Act, 1947. The defence of the respondent is that the services of the petitioner were engaged for seasonal work and he cannot be reinstated because of the non-availability of work. However, the respondent has not placed on the file any document evidencing that the petitioner was employed subject to the availability of work and funds.

18. Thus, as deductible, from the record, it is also quite clear that before terminating the services of the petitioner neither he had been issued any notice nor paid retrenchment compensation. Although, the plea, taken by the respondent, is to this effect that the petitioner had abandoned his job but there is no such material which could go to show that any notice had been issued to him for resuming his duties. ***It has been held by the Hon'ble Apex Court in 2001 LLR 54, M/s Scooters India Ltd.,*** *Vs.* ***M. Mohammad Yaqub that: "When a workman fails to report for duties, the management cannot presume that the workman has left the job despite being called upon to report failing which his name will be removed from the rolls.***" ***It was further held that : " The principles of natural justice were required to be followed by giving opportunity to the workman.*** *Para 12 is relevant and is reproduced as under:*

> *"**The question which then arises is whether the principles of natural justice were followed in this case. As has been set out herein above Mr. Swroop had submitted that the workman had been given an opportunity to join the duty and that he did not join duty even though repeatedly called upon to do so. It is contended that principles of natural justice have been compiled within this case. However, the material on record indicates otherwise. The Labour Court in its award sets out and accepts the respondent's case that***

he had not been allowed to join duty. The respondent has given evidence that even though he personally met Chief Personnel Officer, he was still not allowed to enter the premises. The evidence is that inspite of slip Ex. W.2, he was prevented from joining duty when he attempted to join duty. The slip Ex. W.2 had been signed by the Security Inspector of the appellant. This showed that the respondent had reported for work. As against this evidence, the appellant has not led any evidence to show that the workman had not report for duty. Even, though the slip Ex. W.2 had been proved by the workman, the Security Inspector, one Mr. Shukla was not examined by the appellant. Further the evidence of the senior Time Keeper of the appellant established that the appellant had worked for more than 240 days within period of 12 calendar months immediately preceding the date of termination of service. This was proved by a joint inspector report, which was marked as Ext. 45/A. It was on the basis of this material and the evidence that the Labour Court came to the conclusion that there was retrenchment without flowing the provisions of law. As the workman was not allowed to join duty, Standing Orders 9.3.12 could not have been used for terminating his services."

19. Having regard to the law laid down by the Hon'ble Apex Court (*supra*) as well as evidence, on record, I have no hesitation in holding that the petitioner has succeeded in proving that his services were illegally retrenched by the respondent, who had not abandoned the job at his own.

20. Now the next question which arises for determination before this Tribunal that: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act or not? The answer, to my thinking, is in the affirmative in view of the material on record.

21. In the instant case, the petitioner claiming to have worked for **115 days in 2007, 183 days in 2008, 106 days in 2010, 125 days in 2011, 113 days in 2012, 202 days in 2013, 221 days in 2014, 196 days in 2015, 241 days in 2016 and 150 days in 2017**, the petitioner in his affidavit (PW1/A) claimed to have thus completed 240 days in each of the said calendar years. This claim having not been challenged during his cross-examination by the respondent deserves acceptance. More so, in view of the mandays chart (RW1/B), the own document of the respondent. The said document is indicative of the petitioner having worked for **115 days in 2007, 183 days in 2008, 106 days in 2010, 125 days in 2011, 113 days in 2012, 202 days in 2013, 221 days in 2014, 196 days in 2015, 241 days in 2016 and 150 days in 2017** in the department. When cross-examined (RW-1) feigned ignorance that the petitioner had completed 240 days in the preceding twelve calendar months prior to his disengagement.This claim having been challenged by the petitioner deserves to be accepted as the respondent department has failed to produce the month wise detail of working days of the petitioner before this Court. Section 25-F of the Act, which is alleged to have been violated by the respondent, says:

"25-F. Conditions precedent to retrenchment of workmen.-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

22. In view of this provision, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under section 25-B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,—

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

23. Since, the petitioner is proved to have completed 240 days during the period of twelve calendar months preceding the date of his retrenchment, his services could not have been terminated unless he was served with one month's notice and paid the retrenchment compensation as envisaged under section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not complied with by the respondent. The respondent did no pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

24. In terminating the services of the petitioner, the respondent appears to have violated the provisions of Section 25-G of the Act as well. The said Section provides:

"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

25. The petitioner in claim petition and in his affidavit (PW1/A), which was tendered by way of his examination-in-chief, maintained that Bimla, Keshav Ram and PyareLal who were junior to him are still working with the department. The respondent has also failed to produce the record pertaining the aforesaid alleged juniors before this Court. Moreover, there is nothing on record to show that the above-named persons were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. There is nothing on the file to establish that at the time of disengaging the services of the petitioner, the respondent has followed the principles of "last come first go". Thus, the respondent has failed to adhere to the principle of 'last come first go'. The retaining of the juniors at the cost of the senior is nothing but unfair labour practice.

26. Such being the situation, the respondent can safely be held to have violated the provisions of Section 25-G of the Act as well.

27. However, the petitioner's allegation that the respondent had violated the provisions of Sections 25-H of the Act as well, to my mind, does not appear to have been substantiated. The petitioner's affidavit (PW1/A) as also his cross-examination as (PW-1) are non-existent in the names of the persons who were allegedly appointed by the respondent after his disengagement. The materials on record, thus, being too scanty and nebulous to lend assurance to his allegation that new/fresh workers were appointed after the termination of his services, the respondent cannot be said to have been proved to have violated the provisions of Section 25-H of the Act.

28. Thus, it is held that the disengagement of the petitioner was illegal and against the mandate of the provisions of Sections 25-F and 25-G of the Act. The termination of the petitioner is, thus, hereby ordered to be set aside. The respondent is directed to re-engage the petitioner forthwith on the same post. The petitioner shall be entitled to seniority and continuity in service from the date of his disengagement.

29. Such being the situation, while testifying in the Court as (PW-1), the petitioner has given his age as 32 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back-wages.

30. Consequently, both these issues are partly decided in favour of the petitioner.

ISSUE No.2

31. It has not been shown/proved by the respondent as to what were the true and material facts stated to have concealed by the petitioner by leading specific evidence. Therefore, in the absence of any specific evidence on record, it cannot be said that the petition is not maintainable as the petitioner is stated to have concealed the true and material facts from this Court. Moreover, this issue was not pressed by the learned Additional District Attorney appearing for the respondent at the time of arguments. Otherwise too, from the pleadings and evidence on record, it cannot be said that the petition is not maintainable in the present form. Hence, this issue is decided against the respondent.

RELIEF

32. As Sequittor,in view of deliberation and discussion hereinabove, the present reference/claim petition succeeds in part and the same is allowed partly. The retrenchment of the petitioner is hereby ordered to be set aside. The respondent is hereby directed to re-engage the petitioner forthwith. ***He shall be entitled to seniority and continuity in service from the date of his illegal termination i.e. 30.4.2019, except back-wages***. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Ordered accordingly

Announced in the open Court today this 13th day of Jan., 2022

Sd/-
(RajeshTomar)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE RAJESH TOMAR PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA,**
CAMP AT SHILLAI.

Application Number : 156 of 2018
Instituted on : 14.12.2018
Decided on : 17.1.2022

Dinesh Kumar s/o late Shri Balgu Ram r/o Village Naya, P.O. and Tehsil Shillai, District Sirmaur, H.P., Ex-Safai Karamchari, Co-operative Bank Shillai. . .*Petitioner.*

Versus

The Manager, H.P. State Co-operative Bank, Shillai, District Sirmaur, HP. . .*Respondent.*

Claim petition under the Industrial Disputes Act, 1947

For Petitioner : Shri Abhyender Gupta, Advocate.
For Respondent : Shri Virender Chauhan, Advocate.

AWARD

The present claim petition under the Industrial Disputes Act (hereinafter referred to be as the Act) has been filed directly by the applicant against the respondent.

2. Briefly stated facts of the case as disclosed from the statement of claim thus that the applicant was engaged as "Safai karamchari" in HP State Co-operative Bank, Shillai branch *w.e.f.* 16.5.2015 and continued as such till 12.7.2016, when his services were disengaged in violation of the mandatory provisions of the Act. The applicant had completed 240 days of regular service. No notice or compensation was paid to the applicant at the time of his retrenchment, which was obligatory on the part of the respondent to follow the procedure as laid down under the Act. As a fact of the matter, the applicant approached the Administrative Tribunal, but, on the ground of jurisdiction the OA was withdrawn. A demand notice dated 2.12.2017 was served upon the respondent. The following relief clause has been appended in the footnote of the claim petition:

> "**That the action of the respondent in retrenching the services of the applicant is thoroughly illegal and unjustified in law and the retrenchment is liable to be set aside and the applicant is liable to be reinstated in service with all benefits incidental thereof such as full back-wages and seniority etc. The applicant is not gainfully employed during the period from the date of retrenchment till date."**

3. The lis was resisted and contested by filing written reply on *inter-alia* preliminary objections of maintainability, the selection method was followed by the Bank and the applicant was engaged only on stop gap arrangement/basis. On merits, it is admitted that the applicant was engaged for sweeping work for one hour, till the appointment of part time worker through proper channel. It is submitted that the respondent has never violated the provisions of the Act as the applicant was not daily/regular employee of the Bank and there was no employer employee relationship existing between the parties. There was no question of disengagement because the applicant was not appointed by the respondent and no appointment letter had been issued to him. The applicant was engaged only for one hour as stop gap arrangement for sweeping work of Branch till the appointment of regular/part time worker. It is submitted that no injustice has been caused to the applicant. The question of junior does not arise as the applicant was never engaged as employee of the Branch. It is therefore prayed that the claim petition may kindly be dismissed with costs.

4. While filing rejoinder, the applicant controverted the averments made thereto in the reply and reaffirmed and reiterated those in the claim petition.

5. On elucidating the pleading of parties, the following issues were struck down by my Learned Predecessor for its final determination *vide* Court order dated 24.12.2019.

1. Whether the termination of the services of the petitioner *w.e.f.* 12.7.2016 is voilative of the provisions of the Industrial Disputes Act, as alleged? If so, to what relief the petitioner is entitled to? . .*OPP.*

2. Whether the claim petition is not maintainable as the petitioner had been appointed as a stop gap arrangement on temporary basis till the appointment of a part time worker as alleged? If so, its effects thereto? . .*OPR.*

3. Relief

6. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

7. I have heard the Ld. Counsel for the parties and also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter, while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Partly Yes. The applicant is entitled to lump-sum compensation

Issue No.2 : No.

Relief : Application partly allowed as per operative part of the Award

REASONS FOR FINDINGS

ISSUE NO.1.

9. In support of his case, the applicant stepped into the witness dock as (PW-1) to depose that he was engaged as "Safai karamchari" by the respondent *w.e.f.* 16.5.2015 to 12.7.2016 and he had completed 240 days in a calendar year. He further deposed that no notice or compensation was paid to him at the time of termination. He is unemployed. He used to work in the Bank premises for 5-6 hours and apart from sweeping work, he used to maintain the peon book and opening/closing the ATM room. He also deposed that he was appointed by Shri Sunder Singh Chauhan, Manager and he was retrenched only to accommodate favorite one. He was orally terminated. When cross-examined on behalf of the respondent, the applicant admitted that he had applied for the post of "Safai karamchari" to the notification issued on 17.2.2016. He admitted that Pradeep Kumar was appointed. He denied that he was engaged and deployed by the contractor on outsource basis. He also admitted that he cannot produce any documents regarding his appointment and termination.

10. On the other hand, the respondent in support of their contention, existing in the reply, has relied upon the testimony of its Manager Shri Inder Singh, who stepped into the witness box as (RW-1) to depose that the applicant was kept for sweeping and mowing work for one hour on fixed amount of Rs. 25/- per hour which were increased to Rs. 40/- per hour. He further deposed that the

applicant never remained posted as daily wager, regular or contractual basis and he was not engaged as part time worker through proper channel. No appointment letter was issued to the applicant and no question of junior being retained in the Bank arise. In cross-examination, he denied that the applicant was retrenched to engage Pradeep Kumar in his place. He volunteered that the applicant had also applied and his application was forwarded alongwith other applications to the Head Office.

11. Shri Abhyender Gupta, Ld. Counsel for the applicant contended with all vehemence that the applicant has been engaged for cleanness of the Bank as part time/ contingent/ outsource in the H.P. State Co-operative Bank from 16.5.2015 to 12.7.2016 for a period of one hour. He had completed 240 days in a calendar year. He further contended that neither any notice nor any sort of compensation had been paid to him before terminating his services. The mandatory provisions of the Act have not been complied with. It is, therefore, prayed that the applicant may be reinstated in service with all the consequential service benefits including full back-wages.

12. Shri Virender Chauhan, Ld. Vice Counsel for the respondent strenuously argued that the selection method which is followed by the Bank is that the incharge of the Bank where the part time worker is to be engaged shall display vacancy on notice board and *vide* publicity will be given so as to make it transparent with general terms and conditions and last date of receipt of application. The same shall be forwarded to the Head Office for further confirmation from the Managing Director. The confirmation from the Managing Director shall be communicated to the concerned District Manager, who shall issue letter of engagement to the candidates. As per policy, the selection committee consists of Local Director, District Manager and concerned Branch Manager but this procedure had not been adopted in the present case as he was engaged for sweeping work only for one hour till the appointment of part time worker.

13. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

14. Before, proceeding further, I would like to reproduce Section 2(s) of the Act, which defines the workman as under:

> **"Section 2(s) of the Act, defines "workman" as under : "Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute or whose dismissal, discharge or retrenchment has led that dispute, but does not include any such person :**
>
> **(i) who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957; or**
>
> **(ii) who is employed in the police service or as an officer or other employee of a prison; or**
>
> **(iii) who is employed mainly in a managerial or administrative capacity; or :**
>
> **(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature"**

15. The question whether an employee working part time is a "workman" within the meaning of Section 2(s) of the Act came up before Hon'ble Delhi Court in an authority reported as **Kailash Chand Saigal** vs. **Om Prakash and others 2006 IX AD (Delhi) 158**. The workman was working as a sweeper for half an hour only in the morning. The question was whether an employee working part time for such a short time was a "workman" or not? Hon'ble High Court held the employee to be a "workman" and observed as under :

> **"4. The Labour Court held that a part time employee was covered by the definition of workman as given in Section 2(s) of the Industrial Disputes Act. The emphasis of petitioner has been that a part time employee of the nature of a Sweeper who only used to sweep the office in the morning say for half an hour and half an hour in the evening, could not be covered by Section 2(s).**
>
> **5. The issue of a part time Sweeper had come before this Court in Coal India Ltd.** Vs. **P.O. Labour Court and Others 2001 III AD (DELHI) 742 where the services of a part time Sweeper who used to get Rs.10/ per day for the part time work were terminated in the same fashion without assigning any reason. This Court observed as under : "The Labour Court has relied upon the definition of Section 2(s) of the Industrial Disputes Act, defining the workman and found that according to the said definition a part time employee; will also be a workman as per Section 2(s) of the Act. The Labour Court has also relied upon the judgments reported as State of Workman and others** Vs. **K.C. Dutta 1967; K. Ramachandr an** Vs. **State of Kerala; Gurudarshan Sngh** Vs. **State of Punjab (1983) (1) SLJ 399 (1) SLJ 399;**
>
> **Kanubhai Maru** Vs. **N.K. Desai 1988I LLN 1004 and Yashwant Singh Yadav** Vs. **State of Rajasthan and Others 1987 LLR 96 to come to a conclusion that the definition of the workman is comprehensive and wide enough to include a part time employee. The Labour Court further found that the part time employee is covered by the definition; as per Section 2(s) of the Industrial Disputes Act. I am satisfied that the aforesaid finding of the Labour Court regarding the availability of the protection of Section 2 (s) and other cognate sections is legally sustainable and does not call for any interference. In particular I am in respectful agreement with the law laid down in Kanubhai Maru** Vs. **N.K. Desai 1988 (1) LLN 1004 by the Gujarat High Court where a part time servant doing the work of a sweeper has hold to be a workman and the law laid down in Yashwant Singh** Vs. **State of Rajasthan and Others 1987 LLR 96 by Rajasthan High Court which held that Section 2(s) of the Industrial Disputes Act covers a part time employee also. It was admitted that the workman was employed since 21st of February, 1983 and worked till 31st of October, 1984 and there was no gap or absence in his duty and he had been continuously employed during the said period. The Labour Court held that having thus worked for more than a year, his services could not be terminated without complying with the mandatory provisions of Section 25(F) of the Industrial disputes Act."**
>
> **6. I consider that looking into the definition of Section 2(s) and catena of judgments, a part time workman is equally a workman and is entitled for protection available to a full time workman."**

16. Similarly, in another authority reported as Simla Devi vs. Presiding Officer & Ors. LLJ 1997 (I) 788, Hon'ble Punjab & Haryana High Court observed in paragraph 4 as under:

> **"A plain reading of the definition of "workman" does not exclude the part time workmen form the definition "workman". Such exclusion cannot be read into it** ipso facto **except if it is expressly provided or implied that no other interpretation is possible, which is not the case in the case in hand. We find support for our view from**

the observations made by the Supreme Court in Birdhichand Sharma Vs. **First Civil Judge (1961IILLJ86), wherein the Supreme Court in the facts and circumstances of the case, found that the workers even doing the job at their home are still workmen. Thus, we are of the considered view that a parttime workman shall fall within the definition of "workman" and the finding returned by the Labour Court that a part-time worker is not a workman, cannot be sustained. We may hasten to add that nothing has been pointed out that on any principle of equity, justice, good conscience or the technical interpretation of the definition of workman that a part time workman cannot be termed as a workman is unknown to the industrial world**."

17. In the instant case, the workman/petitioner has been engaged as sweeper for one hours at the rate of Rs.25/ per day and thereafter expenses were increased to Rs. 40/- per day. It is also not disputed that the petitoner had worked as such *w.e.f.* 16.5.2015 till 12.7.2016. Therefore, it is clear that the workman was working for one hours daily as parttime sweeper with the respodnent. A parttime employee is also "workman" within the meaning of the Act and there is no distinction between full time and parttime employees as per Section 2(s) of the Act as referred to above. As such, the claimant is a "workman" within the meaning of the Act.

18. Now adverting to the other aspect of the case. It is submitted by Ld. Counsel for the workman that workman has been terminated illegally and unjustifiably by the management without any reason and without payment of any retrenchment compensation. It is submitted that since the termination is illegal and unjustified, the workman may be reinstated with consequential benefits.

19. On the other hand, it is submitted on behalf of the workman that since the enagement of the petitioner was as stop gap arrangement on temporary basis, hence, on the appointment of part time sweeper, as per procedure, the services of the petitioner has autometically came to an end.

20. Admitedly, the petitioner had worked with the respondent Bank for a period *w.e.f.* 16.5.2015 till 12.7.2016. It is also admitted that before retrenching the services of the petitioner neither any noitce nor compensation has been paid to the petitioner as provided . Therefore, in view of the above discussion, I am satisfied that the workman was terminated illegally and unjustifiably without complying with Section 25 F of the Act, which provides as under:

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

21. Thus, the termination of the workman is illegal and unjustified.

22. Now, the question is as to what relief, the workman is entitled to? In an authority reported as The Workmen of **M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc.** Vs. **The Management & Ors. 1973 (1) SCC 813**, Hon'ble Supreme Court observed as under:

"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. **The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."**

23. Similarly, in another authority reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court** dealt with the question of reinstatement and back-wages and observed 28 as under :

> **"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back-wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back-wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back-wages. "**

24. Considering the facts of this case, I am persuaded to award compensation in lieu of reinstatement and back-wages to the workman.

25. Similarly, in another authority reported as **M.L. Binjolkar** Vs. **State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court observed in paragraph 7 as under :

> **"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. Hindustan Motors Ltd.** Vs. **Tapanj Kumar Bhattarcharya & Anr. (2002 (6) SCC 41), Rajendra Prasad Arya** Vs. **State of Bihar (200 (9) SCC 514), Sonepat Cooperative Sugar Mills Ltd.** Vs. **Ajit Singh (2005 (3) SCC 232), Haryana State Cooperative Land Development Bank** Vs. **Neelam (2005 (5) SCC 91), Manager, Reserve Bank of India, Bangalore** Vs. **S. Mani & Ors. (2005 (5) SCC 100) and Allahabad Jal Sansthan** Vs. **Daya Shankar Rai & Anr. (2005 (5) SCC 124), we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back-wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."**

26. Similarly, in another authority reported as **U.P. State Brassware Corporation Limited and another** Vs. **Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed as under:

> "A Division Bench of this Court in M.L. Binjolkar Vs. State of M.P. (2005) 6 SCC 224, referring to a large number of decisions, held as under:
>
> **"The earlier view was that whenever there is interference with the order of termination or retirement, full back-wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."**

27. The petitioner used to work with the respondent only on part-time basis for one hour and his and he had worked with the management only for more than one year.

28. Considering the fact that the petitioner was a part-time employee only for one hours, I deem it proper that reinstatement would not be proper and instead compensation would be a better alternative. Considering the fact on the file, I deem it proper that compensation of Rs.20,000/ would be appropriate and would meet the ends of justice. I, accordingly, grant compensation of Rs. 20,000/ (Rupees Twenty Thousand only) to the workman, to be paid by the management within

one month of the publication of the award, failing which interest at the rate of 9% (nine percent) would be payable by the management to the workman. This issue is accordingly, decided in favour of the workman and against the respondent.

ISSUE NO. 2.

29. In order to prove this issue no specifi evdeince has been led by the respdonent which could go to show as to show the present claim petition is not maintainable. Moreover, in view of my findings on issue no.1, I find nothing wrong with this petition which is perfectably maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

RELIEF

30. As a sequel to my above discussion and findings on issues no.1 & 2, the claim of the petitioner succeeds and is hereby partly allowed and the petitioner is awarded lump-sum compensation of Rs. 20,000/- (Rupees Twenty Thousand only) to the workman, to be paid by the respondent within one month of the publication of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman and as such the reference is answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records. Ordered accordingly.

Announced in the open Court today this 17th day of Jan., 2022

Sd/-
RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla,
Camp at Shillai.

BEFORE SH. RAJESH TOMAR PRESIDING JUDGE H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA, CAMP AT NAHAN**

Reference Number	:	34 of 2015
Instituted on	:	14.8.2015
Decided on	:	18.1.2022

Rattan Kumar Singh S/o Shri Dhirindr Bhadur Singh R/o VPO Barthrakhurd Chopaypur, District Varanasi, Uttar Pradesh 221104 (Since Deceased) through his legal heirs.

1. Sunita Singh w/o late Rattan Singh
2. Somya Singh d/o late Rattan Singh (minor)
3. Aryan Singh s/o late Rattan Singh (Minor) Both through their natural guardian, mother (petitioner no.1) . .*Petitioners.*

Versus

The General Manager, M/s Sarvotam Remedies Ltd., Village Katha< P.O Baddi, District Solan, H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Shri Virender Sharma, Legal Aid Counsel
For the Respondent : Shri Jagdish Thakur, Advocate

AWARD

The following reference vide notification dated 29.6.2015 and its corrigendum dated 9.12.2015 has been received from the appropriate government for obtaining final judicial verdict, which reads as under:

"**Whether the action of the employer/management of M/s Sarvotam Care, EPIP Jharmajri, Tehsil Baddi, District Solan, H.P. not to allow Shri Ratan Kumar Singh S/o Shri Dhiender Bahadur Singh VPO Barthrakhurd Chopaypur, District Varanasi, Uttar Pradesh 221104 to resume his duties after declared medically fit by the Nehru Hospital Post Graduate Institute of Medical Education and Research Chandigarh on 9.7.2013 with 60% permanent total disability certified by the Government Medical College and Hospital Chandigarh- 160030, as alleged by the worker, is legal and justified? If not, what relief and other consequential service benefits the aggrieved workman is entitled to?"**

2. Briefly stated facts necessary for the disposal of the present reference as disclosed from the statement of claim are thus that the deceased was appointed as an operator with the respondent company in the year 2005 on monthly salary of Rs. 6000/-. He had worked with honesty and sincerity and his work and conduct was found excellent. He met with an accident during duty hours and remained under treatment with PGIMER Chandigarh. He remained on leave from 10.6.2013 to 19.6.2013 and thereafter the respondent did not allow him to resume his duties even after he was declared medically fit by the PGIMER Chandigarh on 19.7.2013 with 60% of total disability. He made several requests to resume duties but the respondent company did not allow him to join back his duties. The deceased died on 27.8.2015 during the pendency of the Industrial Dispute. The legal heirs of the deceased were brought on record. Even, after the death of the deceased, the respondent company had failed to give him consequential benefits *i.e.* funeral charges, wages for the period the deceased remained admitted in the hospitals, treatment charges, insurance, EPF, ESI and re-engagement of any of the member of the family of the deceased in the company. The following relief clause has been appended in the footnote of the claim petition:

"**It is therefore most respectfully prayed that this Hon'ble Court be pleased to answer the reference in favour of the workmen holding this retrenchment/termination to be wholly improper and unjustified and to direct the respondents to re-engage the services of the any member of the petitioner family with the respondent company at the same place and in the same capacity and also direct the respondent to pay the petitioner all the consequential after death services benefits as mentioned in the claim petition. "**

3. The lis was resisted and contested on behalf of the respondent by filing written reply to the claim petition on *inter-alia* preliminary objections of maintainability, only entitled for monetary benefits, the claimant (since deceased) had not met with any accident but suffered head haemorrhage (paralysis) on 12.12.2011, the deceased was a member of ESIC but for benefits documents were not submitted with PF and ESIC. On merits, it is submitted that the deceased was employed as an operator utility. It is also submitted that on 12.12.2011, after completion of duty in general shift, the deceased left the factory premises at 6:10 PM by company bus to his hone

(Pinjore) and during night, he had suffered head hemorrhage (Paralysis) and he was taken by his family to PGI Chandigarh where he remained admitted till 15.12.2011 and thereafter shifted to ESIC hospital Baddi as he was member of ESIC scheme. As a matter of fact, the deceased had suffered paralytic attack and has not met with any accident during the course of employment. It is further submitted that the deceased had suffered brain hemorrhage with spastic hemiparesis right side extensor tendon injury to left and ring finger and 60% permanent disability with respect to whole body and as such he was not in a position to move and walk without the assistance of others. It is denied that the deceased was not allowed to join his duties. He was paid all his dues as full & final settlement on 29.1.2014. The documents competed in all respect were handed over to the wife of the deceased which were not submitted to the appropriate authority till date. Thus, it is prayed that the claim petition filed by the petitioner (since deceased) be dismissed being devoid of merits.

4. While filing rejoinder, the wife of deceased Smt. Sunita Singh, controverted the averments made thereto in the reply and reaffirmed and reiterated those in the statement of claim. It is submitted that the documents handed over to the wife of the deceased were not properly signed by the authorized person *i.e.* General Manager and when she had approached him to get the documents properly signed from the authorized officer, she was not allowed to enter inside the factory premises to meet the General Manager. Rest of the contents were also denied.

5. On elucidating the pleading of parties, the following issues were struck down by my Learned Predecessor for its final determination *vide* Court order dated 4.9.2017.

1. Whether the action of the employer/management of respondent company not to allow the deceased Shri Rattan Singh to resume his duties after having been declared medically fit by the PGI Chandigarh on 19.7.2013 with 60% permanent total disability certified by the Government Medical College & Hospital Chandigarh as alleged by the deceased worker is legal and justified? . .*OPP.*

2. If issue no.1 is proved in affirmative to what relief of benefits the petitioners are entitled? . .*OPP.*

3. Whether the petition is not maintainable as alleged? . .*OPR.*.

4. Relief

6. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

7. I have heard the Ld. Counsel for the parties and also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter, while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Partly Yes.

Issue No.2 : The Legal heirs of the deceased are entitled to lump-sum compensation *i.e* Rs. One lakhs.

Issue No.3 : No.

Relief : Reference partly answered in favour of the petitioners as per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 & 2.

9. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

10. At the very inception, the first and foremost question which arises for its final determination before this Court/Tribunal as to whether the respondent did not allow the deceased to resume his duties after being declared medically fit by PGIMER Chandigarh with 60% permanent total disability as declared by the Government Medial College & Hospital Chandigarh. To arrive at the real bone of contention, it is alleged from the side of the deceased that during the course of the employment with the respondent company, the deceased had met with an accident and he had been referred to PGIMER Chandigarh where he remained admitted. He remained on medical leave *w.e.f.* 10.6.2013 to 19.6.2013 and thereafter he was not allowed to resume his duties by the respondent, even after he was declared medically fit by the PGIMER Chandigarh on 19.6.2013. On the contrary, it is submitted from the side of the respondent that the deceased was not met with an accident during the course of his employment but he had suffered head hemorrhage (Paralysis) at his home (Pinjore) and he was taken by his family to PGI Chandigarh where he remained admitted till 15.12.2011 and thereafter shifted to ESIC hospital Baddi as he was member of ESIC scheme. To the said counter allegations, the Court is required to apply its mind by giving the judicial verdict on analyzing the entire facts and circumstances of the entire case record.

11. From the certain undisputed facts, it is clear on record that the deceased was engaged as utility operator with monthly salary of Rs. 6,000/-, by the respondent company *vide* appointment letter dated 11.11.2005 (PW-3/B). It is also an admitted fact that the Nehru Hospital, PGIMER Chandigarh had issued medical certificate (PW-3/C) in favour of deceased Rattan Singh. It is also an admitted fact that the deceased remained admitted at PGIMER Chandigarh for diagnose head trauma. As per medical record, the deceased remained on medical leave from 19.6.2013 to 19.7.2013. The deceased was diagnosed as a case of traumatic brain injury with spastic hemiparesis right side with extensor tendon injury left little and ring figure and he was permanently disabled by 60% with respect to whole body as evaluated according to the manual for Orthopedics surgeons in evaluating permanent physical impairment/disability *vide* disability certificate (PW-3/D) issued by the Government Medical College, Chandigarh. It is also proved that on 28.1.2014, the Medical Officer from ESIC Hospital as per fitness given by the PGI Chandigarh, recommended for light duties. It is also proved on record that the deceased was died on 27.8.2015, during the pendency of the industrial dispute, leaving behind legal heirs who were arrayed as party. Here, it is important to mention that during the course of proceedings, my Learned Predecessor made strenuous efforts by putting both the parties to reconcile the matter but the respondent had not averse to re-engage the wife or any of the legal heir of the deceased as a casual worker. However, it is observed that the deceased wife shall handover the documents pertaining to the EPF preferably and respondent shall process the case and sent it to the EPF Commissioner after completing the codal formalities.

12. In support of claim petition, the legal heirs of the deceased examined as much as five PWs. (PW-1) Shri Alok Kumar, SSA from the office of EPFO Shimla stated that the deceased Shri Rattan Singh was working with the respondent and his PF account number was 4127/186 which was in operation since 14.11.2005 till 30.12.2011. This witness proved on record the copy of form No.9 (PW-1/A), relevant extract of member ledger (PW-1/B) and notification regarding family pension (PW-1/C). He stated that the employer Sarvotam Care has not forwarded the documents to their office for the release of EPF and family pension. When cross-examined on behalf of the

respondent, this witness denied that the wife of deceased Rattan Kumar Singh submitted all the documents in their office.

13. (PW-2) Shri R.K Kakar, Branch Manager, ESIC Parwanoo deposed that the deceased Rattan Kumar Singh was working with the respondent and he was the member having ESI Code No. 1408664410 and he was covered under the ESI Scheme and their office had paid ESI payment in the sum of Rs. 3,00,693/- to the deceased for 730 days medical rest as per ESI Rules *vide* vouchers (PW-2/A-1) to (PW-2/A-24). In cross-examination, he admitted that their office had paid entire dues to Rattan Kumar Singh, in accordance with rules.

14. (PW-3) Ms. Sunita Singh appeared into the witness dock and tendered in evidence her sworn in affidavit (PW-3/A) whereby she reiterated almost all the averments as stated in the claim petition. She also tendered in evidence the copy of letter of offer (PW-3/B), copy of medical certificate of deceased (PW-3/C), copy of disability certificate (PW-3/D), copy of ESI certificate (PW-3/E), copy of employment certificate (PW-3/F), copy of discharge card dated 13.12.2011 (PW-3/G), copy of certificate issued by Dr. Nidhi Bhardwaj, ESI BAddi (PW-3/H), copy of death certificate (PW-3/J), copy of Pariwar register (PW-3/K), copy of representation dated 9.7.2014 given to ESI (PW-3/L) and copy of letter dated 22.5.2014 Mark X. In cross-examination, she denied that on reaching home after duty, her husband Rattan Singh suffered Brain Hemorrhage. She further denied that Rattan Kumar Singh had not received injuries during the duty hours. She denied that she had not made any complaint to any authority that her husband received injuries during duty hours. She denied that the respondent company had paid entire legal dues of Rattan Singh to her. She admitted that a sum of Rs. 31,894/- was received by her through cheque from the company. She admitted that her husband was having permanent disability of 60%. She admitted to have signed a letter (RX). She denied that the company had given her complete documents but she had never visited the office of EPF. She also denied that all the legal dues have been paid to her by the company.

15. Shri Amar Nath Dubey, SSO ESIC, Baddi appeared into the witness box as (PW-4) to depose that he has been authorized to appear in the Court *vide* (PW-4/A). This witness proved on record the copy of ESIC Central Rules, dated 22.6.1950 (PW-4/B) and notification dated 17.10.1950 (PW-4/B). In cross-examination, he admitted that they had made entire payment of sickness benefits and extended sickness benefits to Rattan Kumar Singh *vide* (X-1) and now no claim is pending with their office.

16. (PW-5) Shri Vishal Sharma, Officer in HR with respondent company has brought the summoned record and deposed that deceased Rattan Kumar Singh had worked with the company from 14.11.2005 till 28.1.2014. He further deposed that certificate (PW-3/H) was submitted by Rattan Kumar Singh to the company which is on record. He admitted that on 12.12.2011, the deceased was on duty till 5:30 PM. He deposed that the wife of the deceased Rattan Kumar had taken the documents relating to EPF and she had never approached the respondent company last year for a job. Sarvotam Care Remedies has about three factories in different location of the country and all are still running. This witness has placed on record the EPF contribution of Ratan Kumar Singh (PW-5/A). When cross-examined, he deposed that there are no dues payable to the deceased Late Sh. Rattan Kumar Singh and there is a heavy work of cosmetic items in their factory which requires skilled and fit employees.

17. (PW-6) Dr. Nidhi Bhardwaj, posted at Medical College, Sector-32, Chandigarh deposed that she remained posted at ESI hospital Baddi till December 2014 and the Medical opinion (PW-3/H) bears her signatures and she identify the same. As per the opinion the patient could have under taken light duties as has been reflected in her opinion. She also examined the patient personally. In cross-examination she volunteered that she had recorded the opinion based on

physical disability of the patient. She admitted that the certificate shown to her is a disability certificate issued by Government Medical College, Chandigarh.

18. On the contrary, the respondent examined (RW-1) Shri Vishal Sharma, Executive HR and Admin with the respondent company (already appeared as PW-5), who tendered in evidence his affidavit (RW-1/A) wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence letter dated 2.11.2015 (RW-1/B) and full and final settlement (RW-1/C). In cross-examination, he admitted that the deceased had worked from the year 2005 till 2014. He further admitted that the Doctor had issued certificate (PW-3/D) to the deceased. He admitted that (PW-3/G) and (PW-3/H) had been supplied to them by the deceased. He admitted that the patient had been advised to do light wok. He admitted that the work could not be offered to the deceased after 28.1.2014. He admitted that after 10.6.2013, the salary had not been released to late Shri Rattan Kumar Singh till his death. He volunteered that the ESI has released an amount to Rs. 3 laksh and an odd towards his salary and medical expenses. He admitted that the deceased had supplied the disability certificate as well as the opinion of the doctors regarding his medical condition.

19. Shri Virender Sharma, Ld. Legal Aid Counsel for the deceased has contended with all vehemence that by leading ocular and documentary evidence before this Court/Tribunal, the petitioner has succeeded in proving that the deceased was not allowed to resume his duties despite the fact that he was declared medically fit with 60% permanent disability by PGI Chandigarh. He has not been paid full & final settlement as claimed. No compensation was paid to the deceased and even no enquiry was conducted.

20. *Per contra* Shri Jagdish Thakur, Ld. Counsel for the respondent argued that there is no Neurologist or Orthopedic has been examined on behalf of the petitioner. It is argued that the deceased had suffered head hemorrhage (Paralysis) at his home and he was taken by his family to PGI Chandigarh and he was not able to resume his duties. The claimant has been paid all his dues as full & final settlement by the respondent company. The medical record of PGI Chandigarh has not been satisfactorily proved. The claimant has miserably failed to prove his case before this Court. As a matter of fact the deceased was diagnosed with 60% permanent disability and it is clear that he was not able to walk without the help/assistance of the others. All the contentions raised from the side of the complainant are false. The respondent company is a serving organization to work for others companies on demand. There was no work available with the respondent company in the month of August, 2015. There is no mention that why the deceased remained admitted in PGI Chandigarh & ESI Hospital Baddi for such a long period. It is therefore prayed that the petition may kindly be dismissed.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

22. In the instant case, there is absolutely no denial to the fact that the respondent management in their reply in para-2 of the petition asserted that the legal heirs of the deceased workman are entitled for all service benefits of the deceased from the respondent. The deceased only entitled to the benefits as released to him *vide* cheque dated 22.5.2014. Though, it is denied that the deceased met with an accident, however, it is submitted that the deceased had sustained injuries on his head while performing his duties with the respondent and a glass door fell on him since then the deceased workman was under mental pressure and that fact is well within the knowledge of the respondent. It is submitted that after this injury, the deceased workman used to make complaints to the respondent to get his treatment properly and he be allotted light work but every time the respondent used to threaten him. It is submitted that the deceased had suffered head

haemorrhage (Paralysis) on 12.12.2011, at his home and remained hospitalized at PGI Chandigarh and ESI Hospital, Baddi. It is again submitted that the respondent company had prepared all the documents and handed over to the wife of the deceased. As per the terms of the reference received from the appropriate government, the deceased was declared medically fit by PGI Chandigarh on 19.7.2013 with 60% permanent disability by Government Medical College & Hospital, Chandigarh was not allowed by the respondent management to resume his duties. According to the claimant, he remained on leave from 10.6.2013 to 19.6.2013. It is the case of the claimant/deceased that he was not allowed to resume his duties even after he was declared medically fit by PGI Chandigarh. Admittedly, during the pendency of the petition, the deceased had died.

23. Verily, in the attendant facts and circumstances, it is proved on record that the petitioner claimant was a regular employee of the respondent management. He was drawing salary of Rs. 6000/- per month being appointed as utility worker. From the pleadings as well as the evidence on record it is proved that the deceased had sustained grievous injuries during duty hours in the company premises whereby a glass door fell on his head which caused grievous injury to him. It is also admitted that the deceased had also suffered head hemorrhage (Paralysis) on 12.12.2011 and remained admitted at PGI Chandigarh and ESI Hospital Baddi. It is also proved on record that the deceased was also issued disability certificate and medical certificate to resume his duties. As per the disability certificate (PW-3/D), the claimant was diagnosed as a case of traumatic brain injury with spastic hemiparesis right side with extensor tendon injury left little and ring finger. He is permanently physically disabled by 60% (Sixty percent only), with respect to whole body as evaluated according to the manual for Orthopaedies surgeons in evaluating permanent physical impairment/disability. As per fitness given by PGIMER Chandigarh, patient has disability seems to be permanent in nature and not appearing to be improving in near future. Patient is under treatment for Neurology Department at PGIMER Chandigarh and from Medicine Department ESIC Hospital, Baddi. At present patient's neurological status is as prescribed above. His neurological deficit is not likely to improve further. He has been given fitness to resume his duties by neurologist at PGIMER C from 20.7.2013. As per medical opinion, the patient can do the jobs as per his physical and neurological status. (suggested light duties).

It is also an admitted position on record that when the deceased reported for his duties after fitness, he was not allotted any light work as per recommended by the Doctors. It is admitted by (RW-1) in cross-examination that the deceased had worked from the year 2005 till 2014. He further admitted that the Doctor had issued certificate (PW-3/D) to the deceased. He admitted that (PW-3/G) and (PW-3/H) had been supplied to them by the deceased. He admitted that the patient had been advised to do light wok. He admitted that the work could not be offered to the deceased after 28.1.2014.

24. Such being the situation, I have no hesitation in holding that the deceased was not allowed to do the work after 28.1.2014 despite the fact that he was advised to do the light work. The respondent has failed to provide his the light duties meaning thereby that the respondent had terminated his services without following the prescribed procedure as per the Act. Admittedly, it would not be appropriate to this Court to pass the order of reinstatement in the present case even though the termination of the deceased is to be proved illegal and unjustified.

25. Their Lordships of the Hon'ble Supreme Court in case titled as **Jagbir Singh** Vs. **Haryana State Agr. Marketing, 2009 (15) SCC 327** has laid down that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention to the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. Again their Lordships of Hon'ble Supreme Court in case **Senior Superintendent Telegraph (Traffic) Bhopal** Versus **Santosh Kumar Seal and Ors. 2010 LLR 677** has reiterated the position as emerged above to award the just compensation as full & final payment to meet the both ends of justice.

26. Similar view has been taken by the the Hon'ble Apex Court in case titled as **Bharat Sanchar Nigam Ltd.** Vs. **Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives** Vs. **General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnstha, Nagpur** Vs. **Prashant Manikrao Kubitkar (2018) 12 SCC 294**.

27. Thus, as a cumulative effect, the services of the claimant being engaged as utility operator *vide* appointment letter. Considering that his regular appointment and thereafter he remained admitted in PGI and ESIC Hospital Baddi. He was not allowed to resume his duties and he remained without work from the year. 2013 till 2015 for almost two years. The interest of justice would meet if the LR's of deceased be granted a lump-sum compensation as full & final settlement. Taking into consideration and applying the holistic approach to the entire facts and circumstances and evidence brought on record and in view of above law laid down by the Hon'ble Apex Court, I am of the considered opinion that ends of justice would meet in case the LR's of deceased Rattan Kumar Singh is awarded lump-Sum compensation which in the case in hand is quantified at Rs. 1,00,000/- (Rs. One lakhs only).

28. For the foregoing reasons, it would be just and proper that an amount of ₹ 1,00,000/- (₹ one lakhs only) is ordered to be paid as lump-sum compensation to the LR's of the deceased. The amount has been calculated keeping in view the number of years put in by the deceased. The amount would be payable on account of the illegality committed by the respondent and for having made the deceased and his LR's go through the ordeal of the present litigation.

29. Hence, both these issues are decided accordingly.

ISSUE NO.3.

30. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication. I find nothing wrong with this petition which is legally maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

RELIEF

31. As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby partly allowed. Resultantly, a sum of Rs. 1,00,000/- (Rs. One lakh only) is awarded towards lump sum compensation in favour of the LR's of the deceased claimant, however, the compensation amount shall be apportioned in equal share in the ratio of 50:25:25 to the LR's of the deceased claimant. It is expressly made clear that the compensation amount awarded in favour of minors shall be invested in the shape of FDR in any Nationalized Bank till the attainment the age of majority. The respondent company is directed to pay the aforesaid lump sum compensation within a period of three months otherwise the same shall carry interest @ 9% from the date of passing of this award till its realization. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 18th day of September, 2021

Sd/-
RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

Sonuverma Vs. **M/s Pzone Overseas Pvt. Ltd.**

Reference No. 298 of 2020

18.1.2022

Present: Shri J.C Bhardwaj, AR for the petitioner
Shri Sandeep Chauhan, Advocate vice csl. For respondent

Heard. Record perused

With the little divulgence of this Court as well as the strenuous efforts put in by the Ld. Counsel for the parties, the Industrial Dispute arose between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 298 of 2020, which stood amicably resolved by way of an amicable settlement. It has been stated at the bar by Shri J.C Bhardwaj, AR for the petitioner that the matter between the management and respondent stood amicably settled by way of memorandum of settlement under section 18 of the Industrial Disputes Act and as per the settlement, the respondent has paid a sum of Rs. 87,000/- in full & final settlement of the dues of the petitioner which includes earned wages, notice pay, retrenchment compensation, bonus, gratuity and all other dues. Nothing remained to be paid to the petitioner and he do not have any claim against the respondent. It is therefore prayed that the petition may kindly be disposed off as fully and finally settled in view of memorandum of settlement Ex. PB. To his effect, his statement recorded separately.

On the contrary, Ld. Vice Counsel for the respondent has stated *vide* separate statement that the petitioner has settled the dispute with the respondent company by taking full & final dues as per memorandum of settlement Ex. PB.

Since, the matter stood amicably resolved between the parties, therefore, nothing survives in the present industrial dispute. The reference is answered accordingly and the award is passed as per the memorandum of settlement Ex. PB. The statements of both the parties and memorandum of settlement (PB) shall form part and parcel of this award. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

18.1.2022.

Sd/-
RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla,
Camp at Nahan.

राज्य निर्वाचन आयोग हिमाचल प्रदेश
STATE ELECTION COMMISSION HIMACHAL PRADESH
आर्मजडेल शिमला–171002 Armsdale, Shimla-171002 Tel. 0177-2620152, 2620159, 2620154,
Fax. 2620152 secysec-hp@nic.in

NOTIFICATION

Dated, the 5th April, 2022

No. SEC(F)1/30/2021-1016-1031.—In exercise of the powers vested in it under Article 243ZA of the Constitution of India and Section 13-A, 13-B, 9 and 21 of the Himachal Pradesh

Municipal Corporation Act, 1994, read with Rule 48 of the Himachal Pradesh Municipal Corporation Election Rules, 2012 and all other powers enabling it in this behalf, the State Election Commission Himachal Pradesh hereby makes the following Rules:—

1. Short title, extent, application and commencement:

(I) These Rules may be called the Himachal Pradesh Municipal Corporation (Disqualification of office bearers) Rules, 2022.

(II) These Rules shall extend to whole of Himachal Pradesh and apply to the election of Municipal Corporations for which election expenses and maximum limit is prescribed under the relevant provisions of the Act and Rules.

(III) These Rules shall come into force on the date of their publication in the official gazette of the State.

2. Definition:

(i) The "Competent Authority" shall mean the Director of Urban Development, Department of the Government of Himachal Pradesh.

(ii) The words and expressions used but not defined herein shall bear the same meaning as are assigned to them in Himachal Pradesh Municipal Corporation Act,1994.

3. Report to the Director:

(I) On the receipt of the statement of accounts from the contesting candidates, the Deputy Commissioner concerned, shall, within 30 days from the last date of submission of accounts, submit a complete report to the Director:

(a) Specifically pointing out the names and address of those candidates, who have failed to lodge the account of election expenses incurred.

(b) the names of the contesting candidates who have incurred or authorised expenditure more than the prescribed limit.

4. Procedure for disqualification on incurring expenditure beyond limit and for failure to lodge an account of expenses:

(I) If the competent authority is of the opinion that a contesting candidate.—(a) has incurred or authorised expenditure in excess of the limits prescribed under Section 13-A of the Act *ibid* read with Rule 48 of the Rules *ibid* and committed a corrupt practice under sub-section (5-A) of the Section 21 of the said Act.

Or

(b) has failed to lodge the account of election expenses within the time and in the manner required under Section 13-B of the Act.

It will complete the necessary inquiry, after giving a reasonable opportunity of being heard to the defaulter, within a period of 60 days from the service of notice by him on such defaulters.

(II) That the competent authority shall pass an order based on such inquiry and the order will be published in the Rajpatra. Copies of the same will be sent to the State Election Commission Himachal Pradesh, Deputy Commissioner and Commissioner, Municipal Corporation concerned.

(III) That a list of disqualified persons will be provided to the concerned Returning Officers/Assistant Returning Officers by the Deputy Commissioner concerned before the date of nomination papers. This list shall also be displayed for the purpose of information of the public at the time of election to be held in the future on the website of the State Election Commission Himachal Pradesh and the concerned Deputy Commissioner.

(IV) Aggrieved by the order of the Director, any contesting candidate may file an appeal to the Divisional Commissioner concerned within 30 days from passing of the order of the Director.

(V) The Divisional Commissioner shall decide the appeal within six months. The order passed by the Divisional Commissioner shall be final.

5. Period for Disqualification:

Period for disqualification shall be five years from the date of such order, unless a different period has been specified in a particular category of cases in the Act abovementioned.

By order,
Sd/-
(ANIL KUMAR KHACHI)
State Election Commissioner .

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है